

LIBRARY
SUPREME COURT, U. S.

Office-Supreme Court, U.S.
FILED

MAR 16 1964

JOHN F. DAVIS, CLERK

IN THE
**SUPREME COURT
OF THE UNITED STATES**

No. 508 October Term 1963

ANDRES LUCAS and ARCHIE L. LISCO, individually and as citizens
of the State of Colorado, taxpayers and electors therein, for
themselves and for all other persons similarly situated,

Appellants,

—vs—

THE FORTY-FOURTH GENERAL ASSEMBLY OF THE STATE OF COLO-
RADO, JOHN LOVE, AS GOVERNOR OF THE STATE OF COLO-
RADO, HOMER BEDFORD AS TREASURER OF THE STATE OF
COLORADO, AND BYRON ANDERSON AS SECRETARY OF STATE
WICK DOWNING and WILBUR M. ALTER.

Appellees.

EDWIN C. JOHNSON, JOHN C. VIVIAN, JOSEPH F. LITTLE, WAR-
WICK DOWNING and WILBUR M. ALTER,

Added Appellees.

=====

**APPENDIX TO BRIEFS OF APPELLEES
AND ADDED APPELLEES**

=====

DUKE W. DUNBAR

Attorney General of the State of
Colorado
State Capitol Building, Denver,
Colorado

**ANTHONY F. ZARLENGO
V. G. SEAVY, JR.**

Majestic Building, Denver,
Colorado
AMherst 6-3141

Attorneys for appellees, The
Forty-Fourth General Assembly
of the State of Colorado, John
Love, as Governor of the State
of Colorado, Homer E. Bedford
as Treasurer of the State of
Colorado, and Byron Anderson
as Secretary of State of the State
of Colorado

RICHARD S. KITCHEN, SR.

First National Bank Building
Denver, Colorado
623 0196

STEPHEN H. HART

Equitable Building
Denver, Colorado
AM 6-1461

CHARLES S. VIGIL

E & C Building
Denver, Colorado
CHerry 4-0728

Attorneys for appellees, Edwin
C. Johnson, John C. Vivian,
Joseph F. Little, Warwick Down-
ing and Wilber M. Alter

TABLE OF CONTENTS

	Page
1. Portion of Pretrial Conference Transcript.....	1
2. Full Transcript of Trial, Except Cross-Examination of Witness Lawson by Appellants.....	7
3. Affidavit of Edwin C. Johnson.....	197
4. Page 7-2 of Plaintiffs' Exhibit 1.....	212
5. Defendants' Exhibits E, E1, E2, E3, E4, E5, and E6	213
6. Intervenor's Exhibits	227
B. Reapportionment of the Senate as Created by Amendment #7	227
C. Voting Results on Amendments 7 and 8.....	229
D. Percentage of Registered Voters	232
E. Colorado Home Rule Cities	234
7. Majority Opinion of United States District Court, Civil Actions Numbered 7501 and 7637.....	235

1. Portion of Pretrial Conference Transcript

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

ARCHIE L. LISCO, Etc.,

Plaintiffs,

vs.

STEPHEN L. R. McNICHOLS,
Etc., et al,

Defendants.

CIVIL No. 6501

WILLIAM E. MYRICK, et al,

Plaintiffs.

vs.

FORTY-THIRD GENERAL
ASSEMBLY OF THE STATE OF
COLORADO, et al,

Defendants.

CIVIL No. 7637

OFFICIAL TRANSCRIPT

Pretrial Conference

Proceedings before the HONORABLE JEAN S. BREITENSTEIN, HONORABLE ALFRED A. ARRAJ and HONORABLE WILLIAM E. DOYLE, beginning at 9:30 o'clock a.m., on the 13th day of February, 1963, in Room 216, Main Post Office Building, Denver, Colorado.

APPEARANCES:

FRANCIS R. SALAZAR and **CARL L. HARTHUN**, Attorneys at Law, Denver, Colorado, appearing for the Plaintiffs in Civil Action No. 7501.

GEORGE CREAMER, Attorney at Law, Denver, Colorado, appearing for the Plaintiffs in Civil Action No. 7637.

DUKE W. DUNBAR, Attorney General of the State of Colorado, and **RICHARD BANGERT**, Assistant Attorney General, appearing for the Defendants in Civil Action No. 7501 and Civil Action No. 7637.

A. F. ZARLENGO and **V. G. SEAVY, JR.**, Attorneys at Law, Denver, Colorado, appearing as Special Assistants to the Attorney General in Civil Action No. 7501 and Civil Action No. 7637.

RICHARD S. KITCHEN and **HARLEY WILLIAMS**, Attorneys at Law, Denver, Colorado, appearing for the Intervenors in Civil Action No. 7637.

PHILIP CAROSELL, Attorney at Law, Denver, Colorado, Amicus Curiae.

MR. ZARLENGO: I wonder if I could add one thing to what the Court stated? We think the issue is very simple, whether or not there is denial of equal protection by the apportionment of senatorial districts under Amendment Number 7. In other words, we are speaking about Number 7 and not any legislation passed pursuant to Amendment 7.

THE COURT: I understand that that's the position of the parties, but, Mr. Zarlengo, I think we do have to consider what Mr. Creamer just said, that goes to a determination made by the Court. If the Court should hold against the validity of Number 7, then you would have the

question of the validity of the apportionment as it existed before and would exist without Amendment Number 7. Isn't that correct?

MR. ZARLENGO: Oh, yes, that would be true; if Your Honors would hold that the amendment was discriminatory.

MR. CREAMER: That's all I referred to. We would then be back essentially where we started and in the same posture we were without 7.

MR. CAROSELL: There is one thought, Your Honor. That is the assumption of Mr. Zarlengo is that the sole issue is the Senate and I insist that it is a wrong consideration.

THE COURT: As I have tried to say it several times, the question is the apportionment of the legislature, is that apportionment one which is valid under the provisions of the 14th Amendment requiring equal protection.

MR. CAROSELL: Both houses.

THE COURT: I am just saying Colorado General Assembly.

MR. CAROSELL: I agree with that.

MR. WILLIAMS: Does this include the Lamb Bill, or are we going to look first at Amendment 7? I think this is important to determine whether we are examining Amendment 7.

THE COURT: Well, Mr. Williams, as I understand the statement of the parties, there is no issue raised before this Court as to whether the Lamb Bill conforms or does not conform with Amendment Number 7. That issue is not in this case.

MR. SALAZAR: If it please the Court, there is one thing the Court mentioned, whether or not due process was in issue. I was thinking under the amendment I propose to make as to the wording in the heading of Number 7, it is too vague and indefinite and ambiguous, perhaps strictly speaking due process entered into that under that amendment and in that sense—

THE COURT: It may be. I can't say one way or the other, but do you see any other due process question?

MR. SALAZAR: No, sir, I don't.

THE COURT: All right. Well, I think the issues are pretty well defined, and it seems to me that the parties can easily agree to what the general issue is.

Now, I can't speak for Judge Arraj or Judge Doyle, but so far as I am concerned, I have no desire to have you go into a minutiae detail as to what might or might not happen on each word, paragraph, sentence and section of some statute. I think you have got a better lawsuit if you stick to the one general proposition.

JUDGE DOYLE: I feel the severability issue on the districting ought to be specifically noted, and Mr. Salazar has noted it.

MR. CREAMER: There is a problem on that, of course, and it might be well to note it, because there is the question of whether single member districting within multi-member districts would be a principle which would or would not be affected by the unconstitutionality of it and I know many people do have rather considerable interest in that aspect of the problem.

THE COURT: I am glad Judge Doyle mentioned that. That is a problem which we will have. If it should be held that it is not severable, of course, the matter will fall. If it is, you have another problem.

MR. CAROSELL: The thought that bothers me, Your Honor, is the questions of implementing legislation that is intimately tied up with Amendment Number 7.

THE COURT: But, Mr. Carosell, you are a friend of the Court here. No party has raised that issue and that issue isn't before the Court. We have the general issue as to whether Amendment 7 violates the 14th Amendment.

MR. CAROSELL: The only reason—

THE COURT: We are not concerned now on the issues presented by these parties whether implementing legislation conforms or does not conform with Number 7.

MR. CAROSELL: The only reason I bring that up is that Judge Doyle at the last hearing specifically asked should we wait for implementing legislation as a test to see what the legislation would do.

THE COURT: Mr. Carosell, you don't define the issues. You are just a friend of the Court. The parties define the issues, and according to the statements made thus far there is no issue on that.

MR. CREAMER: I think the matter Judge Doyle and other members of the Court had in mind was whether there would or would not be an apportionment bill enacted, and we know that there is, but the problems that are raised by that bill with reference to which some opinion of the Attorney General has been sought and rendered as to whether it does or does not comply with 7 are a very complex and quite technical range of problems.

The problem of whether or not 7 is constitutionally valid is a Federal matter we can very much more readily ascertain, and the fact of the implementing legislation does assist us in that we know now what the general scheme is that is involved, but whether the scheme properly carries out 7 doesn't in my own thinking have much to do with whether 7 is valid to start with or not, and I should be

rather reluctant to try to get that terribly involved range of matters in because it would involve a county by county and precinct by precinct survey of the state, which I don't think serves any problem in the fundamental problem we are trying to solve here.

THE COURT: Do you agree?

MR. ZARLENGO: Yes, sir.

MR. SALAZAR: Yes, sir.

MR. CAROSELL: If I may say one last word, when we first took this up before the first hearing and when this Court rendered its opinion, it was primarily upon the basis of the fact that the implementing legislation that existed at that time, which was the 1953 reapportionment act, was itself obsolete and did not conform to the organic law of the state and violated the 14th Amendment.

Now, by the same logic, if it is found that this implementive legislation, irrespective of whether or not it conforms to Amendment 7, violates the 14th Amendment, it itself is invalid.

THE COURT: Granting that, Mr. Carosell, the parties make the issues here and they say the question is whether Amendment Number 7 violates the amendment, and not whether the implementing legislation conforms with Amendment Number 7. Now, that is a simple issue, which the people of the State of Colorado are entitled to have decided. The decision in that may or may not result in questions involving technical details of the implementing legislation, but it seems to me you have to first get a decision on the broad, general question.

MR. CAROSELL: I agree with that, but I just cannot see how we could divorce getting the implementing legislation as we did the last time.

THE COURT: Well, now, I think there is at least general agreement with the issues and I think you know what they are to put them in a pretrial order.

**2. Full Transcript of Trial, Except Cross-Examination
of Witness Lawson by Appellants**

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

ARCHIE L. LISCO, et al,

Petitioners,

v.

STEPHEN L. R. McNICHOLS,
etc., et al,

Respondents.

and

WILLIAM E. MYRICK, et al,

Plaintiffs
and
Petitioners,

v.

THE FORTY-THIRD GENERAL
ASSEMBLY OF THE STATE OF
COLORADO, et al,

Respondents
and

Defendants.,

FEDERAL PLAN FOR APPOR-
TIONMENT, INC., et al,

Intervenors:

CONSOLIDATED

Civil Action No. 7501

Civil Action No. 7637

OFFICIAL TRANSCRIPT

Testimony of Witnesses
Little and Johnson

Proceedings before the HONORABLE GENE S. BREITENSTEIN, HONORABLE ALFRED A. ARRAJ, and HONORABLE WILLIAM E. DOYLE, in Courtroom A, Main Post Office Building, Denver, Colorado, beginning at 9:30 o'clock a.m., on the 30th day of July, 1962.

APPEARANCES:

GEORGE L. CREAMER, Attorney at Law, Denver, Colorado, appearing for the Plaintiffs in Case Number 7637.

FRANCIS R. SALAZAR, Attorney at Law, Denver, Colorado, appearing for the Plaintiffs in Case Number 7501.

RICHARD BANGERT, Attorney at Law, Denver, Colorado, appearing for the Defendants.

RICHARD S. KITCHEN, Attorney at Law, Denver, Colorado, appearing for the Intervenors.

PHILIP J. CAROSELL, Attorney at Law, Denver, Colorado, appearing as Amicus Curae.

WHEREUPON, during the progress of the hearing, the following testimony and witnesses were produced:

MR. KITCHEN: Your Honor, we would like to call Mr. Little to the stand.

JUDGE BREITENSTEIN: Very well, come and take the stand, Mr. Little, and take the oath.

JOSEPH F. LITTLE

called as a witness by the Intervenors, being first duly sworn, on his oath testified as follows:

DIRECT EXAMINATION

BY MR. KITCHEN:

Q Mr. Little, would you please state your full name, address and occupation?

A My name is Joseph F. Little. I reside at 3675 South Franklin Street in Cherry Hills. I am an attorney at law with offices in 1015 Security Building, Denver, Colorado.

Q Your residence is in Arapahoe County, is that correct?

A That's right.

Q How long have you lived in Arapahoe County?

A About twenty-one years.

Q Now, Mr. Little, would you please outline briefly to the Court what political positions you have held in the State of Colorado?

A Well, I was a Democratic precinct committeeman and a Democratic district captain.

Q Would you give the periods of time involved?

A I was Democratic precinct committeeman from 1928, I believe, until about 1931. I was Democratic district captain of old District L from 1931 to 1934. I was Democratic co-chairman of Denver from 1934 to 1940. I was Democratic state chairman from 1948 to 1955, and I have also served on I don't know how many various committees, executive committees, and central committees, of one kind or another.

Q I think you stated that these precinct and captaincies were in the City and County of Denver?

A That's correct.

Q Mr. Little, with regard to your activity in the precincts in Denver and statewide, are you familiar with the allegations of the motion to intervene and the petition to intervene with regard to the operation of the present laws in the populous counties?

A Yes.

Q Would you please inform the Court as to the operation of the present constitutional requirement that no county be subdivided in allocating representatives and senators among the various counties?

A Well, it results in the first place in the larger counties such as Denver—I think there are—well, there are so many candidates on the ballot it is impossible for the average voter to know more than just a few of whom he is voting for. It means in the City and County of Denver each citizen is represented now by seventeen representatives and eight senators, whereas in other counties that proportion drops. For instance, in Pueblo, I believe you have got representation by two senators and four representatives, and many other counties are one senator and one representative, so you have got on the one hand an unequal representation, and on the other you have what amounts to a lottery, because I know that the vast majority of the people of Denver have no knowledge of the qualifications of the candidates, much less even know many of the candidates who are running, particularly for the House of Representatives.

Q What is the problem that the candidates face in the City and County of Denver?

A Well, they have a citywide race. I don't just quite understand your question.

Q How many precincts are involved approximately?

A What?

Q Is it true there are approximately 450 or 465 precincts involved?

A That's right.

MR. CREAMER: If it please the Court, we hope as a matter of courtesy to counsel and the witness not to interrupt, but, first, the questions are leading. Secondly, the problem is not a problem of apportionment but apparently of mathematical dynamics, and we do question for the reasons previously mentioned in objections to the whole of the line of testimony the propriety of the leading questions and propriety of purely political questions.

JUDGE BREITENSTEIN: Your objection will be noted. I am sure counsel will try to avoid any leading questions and the reception of evidence as to the need for dividing senatorial and representative districts is received on the basis of materiality and pertinence. That will be determined later.

As I understand the issues presented here, Mr. Kitchen, it is a question as to whether there has been a denial of equal protection of the laws because of the disparity in the apportionment among districts, not a question of whether a district should elect one or seventeen representatives.

MR. KITCHEN: Your Honor, I would like to state this for the Court. I am assuming now, first of all, that the Court is not going to dismiss this proceeding. We reserved that question in argument.

JUDGE BREITENSTEIN: Counselor, I didn't sustain any objection. There will be plenty of time for argument. My observations were just to make the record straight by receiving the evidence we are making no ruling on materiality and pertinence. You will have plenty of time for everything.

MR. KITCHEN: I just wanted to state this line of questioning is directed toward what the Court should do if there is found to be some lack of due process or equal protection.

JUDGE BREITENSTEIN: All right, go ahead.

Q (By Mr. Kitchen) Now, Mr. Little, have you had occasion as a precinct committeeman and district and county and state chairman to analyze the votes cast for senator and representative for the Colorado legislature in the City and County of Denver?

A Well, I undoubtedly have in the past, but I can't recall anything specific at the present time.

Q With regard to analyzing these votes, did you also have occasion during these periods to observe the manner in which candidates were supported and nominated and supported in the City and County of Denver?

A Well, it goes back again to this same situation. We have so many candidates on the ballot, people don't know whom they are voting for, for instance, in Denver, and the candidates here, if their names begin with A, B and C, if they get on the top line of the voting machine in the primary election and if they have some organized groups supporting them, they are almost certain to be elected. Seven out of our eight senators, as I recall it, from Denver have names beginning with A, B or C.

Q Mr. Little, what is the political technique which you describe with regard to the organized group that supports these candidates?

A Well, this gets into a situation where—let's take an organized group, maybe five thousand voters, in Denver. Now, ordinarily that group might have sufficient influence in the neighborhood of their respective members to probably influence the election of three or four representatives or maybe a couple of senators, but as things stand now, without this districting provision, this constitutional provision which says no county shall be divided into senatorial or representative districts, this group's influence is magnified many times. That five thousand votes can be used to pressure, to inform the candidates to support the attitude of this particular group. You have got five thousand votes that applies not to just the three or four that might come from their respective neighborhood, but to the entire seventeen. In other words, as I see it, the influence of pressure groups is many, many times magnified by the fact they are permitted to vote for so many candidates here in Denver instead of particular neighborhoods.

I might add along that same line, there are other counties in the state where if you do not live in the center of population, your chances of election are not good. For instance, Pueblo, and Colorado Springs would be another. Pueblo is entitled to four representatives. I think most of them all come from Pueblo. The reason is that Pueblo has the majority of population. If they are districted there would probably be one rural candidate and three from Pueblo. As it is now, Pueblo controls the whole thing. As the result, the people in rural Pueblo County are virtually disenfranchised.

I might say the same thing happens here. There are large areas of Denver which if Denver were districted would have their own representative or senator. As it stands now because of the quirks of politics in many areas they have nobody representing them.

Q You have in the past used a particular phrase, and I have not had a chance to inform you of your testimony this morning, but I would like with the Court's indulgence to ask you this question, whether or not the process you are referring to is not known as "single-shot" voting?

A No, that would be where you have some group that would simply concentrate on one or just a few particular candidates, and vote for them, but not vote for the entire seventeen, which would give those particular candidates quite an advantage over the other candidates.

Q Have you personally observed that phenomena under the present system?

A Yes, sir.

Q Would you say that is or is not a common phenomena under the present system?

A Well, I can't say it is common. It has been indulged in several times to my knowledge.

MR. KITCHEN: There are no further questions of this witness. You may examine.

JUDGE BREITENSTEIN: Mr. Creamer.

CROSS EXAMINATION

BY MR. CREAMER:

Q Mr. Little, I take it that you recognize that there is some problem of reapportionment existing in the State of Colorado currently? Is that the case?

A Yes, but that is not the sole problem. I don't think it is even the basic problem.

Q You do recognize that there is a differential between some rural counties and some urban counties and a differential between urban counties themselves, is that true?

A Yes.

Q Mr. Little, I take it that in addition you have an objection to the fact that there exists constitutionally a provision requiring that counties not be divided into sub-districts. That I gather is the purport of your testimony as elicited by counsel?

A That is right.

Q And this testimony is not intended, as I gather, to go to the fact that a redistricting is not needed?

A Pardon me?

Q I will strike it. Perhaps there are too many negatives to make it clear. Your testimony relative to the necessity for subdividing districts is not intended as testimony to the effect that there is no need for a redistricting, is that correct?

A Well, now, you have got two kinds of districts, if

you are talking about redistricting under the present constitution—

Q Yes.

A And not about redistricting under so as to provide one representative for each representative district throughout the state and one senatorial district for each senator throughout the state. I would say that the latter is by far more important.

Q That I am afraid wasn't my question. Do you recognize that there is a necessity for a redistricting under the present constitution?

A No.

Q You do not?

A No.

Q You consider that it is reasonable to continue the present differential under the present constitution?

A That's rather hard to answer this way. Let me give it to you first this way. If you redistrict under the present constitution, you are going to compound what I would only call as the lottery that exists in our larger counties. Every time you add a representative to Denver, every time you add a senator to Denver, you add at least two more names to the ballot, which makes it that much more confusing to the voters, many of whom, in fact the vast majority, do not know who they are voting for now.

I will put it this way, if you were to change the constitution first to eliminate that, then certainly it will be necessary thereafter to redistrict the state and senatorial and representative districts, yes. That's about the only way I can answer. I am sorry.

Q Mr. Little, do you consider that it is reasonable or rational to maintain in the House of Representatives four representatives for the County of Pueblo, with 118,000

population, and two representatives for the County of Arapahoe and Adams, with 120,000 population?

MR. KITCHEN: Object to the question, Your Honor.

JUDGE BREITENSTEIN: Overruled.

A Under the present—now, your first part of that question was what do I consider it proper—

Q Do you consider there is a rational basis in the present House of Representatives for granting to the County of Pueblo, with 118,707 population, four representatives, and to the County of Adams with 120,296 population two representatives?

A That question I cannot answer yes or no for the simple reason that it is a question of balancing which is the worst evil, and I would say that's the lesser of the two evils under our present constitution.

Q You propose under the amendment of which you are one of the sponsors, nonetheless, to redistrict the House of Representatives, do you not?

A That's right.

Q But you consider it unnecessary to do so?

A No, that isn't a fair assumption. The very fact that we are trying to do it now is to accomplish two purposes. First, to stop this situation of where a voter in Denver is confronted with a ballot of at least thirty-four candidates, seventeen Republican and Seventeen Democrat, most of which he has no knowledge of, the very fact we are trying to stop that situation and give the voter an opportunity for an intelligent choice. At the same time we are doing the thing which you are asking for, we are also asking for our redistricting for the State of Colorado, and legislative districts of as nearly equal population as may be.

Q In representative districts, you want the Senate to continue as unequal as possible, is that not the case?

A It is not as unequal as possible.

Q You want, I believe, a continuation of the present situation, Mr. Little, in which the smallest senatorial district contains 17,481 persons, and the largest with the same number of senators, namely one contains 53,343 persons, is that not true?

A That is correct.

Q And you consider there is a rational basis for a three to one differential in that matter?

A Yes, I do. For instance, you have got a bigger disproportion than that in the Congress of the United States. You have got—for instance, Nevada, with 200,000 people, and—250,000—they have two senators. New York has two senators with sixteen million.

Q Mr. Little, do you recognize there is a distinction between a sovereign state and an administratively bounded county?

A In the sense they are each geographical areas, there is none.

Q I see. The fact of their sovereign capacity has, in your opinion, no distinguishing characteristic or function?

A I think when the Federal constitution was written, Mr. Creamer, that same question came up. You had colonies with large areas of population, concentrated population. You had others that did not, and it was felt there should be a differentiation in the Congress of the United States. Consequently, the Senate was based on area, the House of Representatives on population.

Q Mr. Little, the County of Huerfano has 70,000 and Denver has 490,000. Do you consider the differential is supposed to be continued indefinitely on a nine to one basis?

A It doesn't need to continue indefinitely. It can

continue for as long as the people do not want to change the State constitution, and they can do that at any election.

Q Is it your opinion those people who are 490 odd thousand in Denver must continually, though guaranteed equal protection of the law, be unequally represented as long as someone else wishes them to be?

A They are unequally represented right now.

Q Violently so.

A Umm—

Q Violently so?

A Well, that's a matter of opinion.

Q Mr. Little, your proposed amendment does not become operative until the year 1964, is that correct?

A That's correct.

Q So that nothing under that amendment would be done to correct the legislative session leading to the election of the 44th General Assembly, which will take its seat in 1963, January, 1963?

A That's right, it couldn't be.

Q That's correct, and you continue—you believe that it is desirable that nothing should be done by this Court to correct a situation which your amendment cannot correct by its terms?

A Mr. Creamer, this Court cannot amend the constitution of the State of Colorado. It might declare that provision regarding the districting of counties was contrary to the Federal constitution, but beyond that it is a matter that rests with the people of the State of Colorado. Again, I am making this statement—

Q I do not believe there is anything in the action

before this Court that proposes to withdraw from the people of Colorado the right to civil—

MR. KITCHEN: Your Honor, I will object to the argument with the witness.

JUDGE BREITENSTEIN: Let's don't argue with the witness. Your last few questions have been argumentative.

MR. CREAMER: Perhaps, sir.

JUDGE BREITENSTEIN: Those arguments are better presented to the Court. We will do the best we can.

MR. CREAMER: I would agree with Your Honor. I think no further questions of Mr. Little. Thank you.

JUDGE BREITENSTEIN: Mr. Salazar, have you got any?

MR. SALAZER: Just a couple, Your Honor. May it please the Court?

FURTHER CROSS EXAMINATION

BY MR. SALAZAR:

Q Mr. Little, it is my understanding that you agree that the present system of apportionment is improper, is this correct?

A Yes.

Q But it is your feeling that also our present system of districting is improper as well, is this correct?

A You mean—

Q Or lack of districting?

A You mean insofar as a county may not be divided?

Q Yes.

A That's correct.

Q Because you feel this lack of districting is improper, you believe we should go along with the improper apportionment somehow?

A Well, as I told Mr. Creamer, it is a question of balancing evils, and I think the far greater evil is the situation which makes the election in our larger counties of senators and representatives nothing more than a lottery. People simply do not know who they are voting for. I think once we give them the opportunity of knowing their candidates, that is the more important thing. The disparity of numbers, which is so, is not nearly as bad as not knowing who you are voting for.

Q Now, you used the illustration of Denver. You live in Arapahoe County?

A Yes.

Q I believe you are aware that Arapahoe County is considered one of the most underrepresented counties in the United States, not just in Colorado, but in the United States?

A It has less representation than it should, yes, sir.

Q Now, how many representatives do you have in Arapahoe County?

A Two.

Q Let us say there were four or six or even eight in Arapahoe County, if it were reapportioned. Do you mean to say you do not believe you or other people in Arapahoe County could familiarize yourselves with that many people?

A I might because I am interested in politics, but I would say from my best experience half the people in Arapahoe County would not.

Q Do you think that half the people in Arapahoe

County familiarize themselves with the two representatives they now have?

A That's possible, yes.

Q Wouldn't you say those who are going to familiarize themselves with the representatives do so with two or ten, those who are not going to do so are not going to even with two or ten?

A That is a question of degree. Everytime you have an additional representative to the Denver ballot or Arapahoe County ballot, of necessity you must add two. I mean, everytime you give Denver or Arapahoe County one, you must of necessity add two candidates to their ballot, one Republican and one Democrat, and the result is you have got a geometrical progression in a way. When you said eight, you have sixteen names on the ballot. When I was co-chairman of Denver, we had thirteen representatives. I knew the Democrats, one or two of the Republicans, and I didn't know all, and I don't believe there is anybody in Denver at that time or even now that knows all of the people on the ballot.

Q You were the Democratic county chairman?

A Yes, sir.

Q Did you make any attempt to know?

A Yes, I did.

Q Would you have voted for them if you had known them?

JUDGE BREITENSTEIN: That has nothing to do with this lawsuit. Defendants?

MR. BANGERT: We have no questions, Your Honor.

JUDGE BREITENSTEIN: Redirect?

REDIRECT EXAMINATION

BY MR. KITCHEN:

Q Mr. Little, a question was asked with regard to the operation of the Federal plan in 1964 and you, of course, are familiar with the text of that, which before you were here was admitted as an exhibit. Would you please point out the savings clause in that amendment?

JUDGE BREITENSTEIN: Well, that speaks for itself, Mr. Kitchen.

MR. KITCHEN: All right, no further questions.

JUDGE BREITENSTEIN: Any other questions of Mr. Little? You may step down.

THE WITNESS: May I be excused?

JUDGE BREITENSTEIN: Any objection to Mr. Little being excused?

MR. CREAMER: No objection.

MR. BANGERT: No objection.

MR. SALAZAR: No objection.

JUDGE BREITENSTEIN: You are excused from further attendance.

MR. KITCHEN: Call Edwin C. Johnson to the stand.

JUDGE BREITENSTEIN: Come forward, take the stand and be sworn.

HONORABLE EDWIN C. JOHNSON

called as a witness by the Intervenors, being first duly sworn, on his oath testified as follows:

DIRECT EXAMINATION

BY MR. KITCHEN:

Q Would you please state your name and address?

A Edwin C. Johnson, 901 Sherman Street, Denver.

Q You are one of the intervenors in this action, is that correct?

A I am, sir.

Q What is your voting residence, Mr. Johnson?

A Craig, Colorado.

Q What county is that?

A Moffat County.

Q How long have you maintained a voting residence in that county?

A Since 1910.

Q Would you briefly outline your political experience in the State of Colorado?

A Well, I was in the Colorado General Assembly, in the House.

JUDGE BREITENSTEIN: I think the Court is fairly familiar with the Senator's record.

MR. KITCHEN: I think we would like to have this matter in the record.

JUDGE BREITENSTEIN: Very well.

A (Continued) Service in the Colorado General Assembly in the House, four terms. President of the Senate as Lieutenant Governor, one term, and three terms as Governor of Colorado, and three terms as United States Senator from the State of Colorado.

Q When did this political experience commence, what year?

A In 1922. I was elected in 1922 and began service in 1923.

Q Prior to your election to the House of Representatives, had you any other experience in elective office?

A Yes, I was Assessor of Moffat County.

Q How long was that?

A Well, I was elected for two years. I did not serve my full term. I resigned before my term had expired. I don't remember the exact number of months, but probably for about eighteen months I was Assessor of Moffat County.

Q Now, in connection with your service in the legislature, did you have occasion while in the legislature to consider matters affecting reapportionment of the legislature or districting of the legislature?

A As I recall, the matter did not come up, was not presented to the General Assembly, by bill during the term when I served as a legislator.

Q Did you have experience with this problem when you were Governor of the State of Colorado?

A No, I don't recall that I had any experience with the matter of apportionment during my three terms as Governor of Colorado.

Q Would you please state what your—prior to your association with the intervenor Federal Plan—what has been your experience in connection with the problem of reapportionment of the Colorado legislature?

A I was appointed by the Governor of Colorado, I believe it was in 1958, to serve on a committee of some forty members appointed from the State of Colorado to study apportionment and to report to the Governor our findings.

At the first meeting of this committee, committee of forty-one, I believe it was—at the first session of that committee's meeting, which I attended, I was elected or selected to the executive board and made chairman of the executive board, and asked to hold hearings throughout the State of Colorado on the question of apportionment.

We did hold hearings and we had some 200,000 words of testimony on the question from all parts of the State of Colorado. We did hold a great many executive sessions, and we did hold a session in which all of the delegates appointed by the Governor appeared. We held that session in the chambers, in the Senate chambers, of the State of Colorado, and we took votes on the proposal on the report that we were going to submit to the Governor, and we did prepare a report and a minority report was also prepared and our report was submitted by Mr. Justice Alter. The minority report was submitted by Mr. Justice Alter.

Q Was there a minority report?

A There was a minority report.

Q And was that submitted with the report of the committee?

A I am not sure. I am not certain.

Q You were the chairman of the executive committee, is that right?

A That is correct, but I was not chairman of the committee. Judge Alter was chairman of the committee of forty-one.

Q Judge Alter was—was he then a member of the Colorado Supreme Court?

A No, he had retired at that time.

MR. KITCHEN: If it please the Court, I am going to ask that this report that was previously offered be marked for identification.

JUDGE BREITENSTEIN: I thought we got over documentary evidence a little while ago, Mr. Kitchen. You said you didn't have any more.

MR. KITCHEN: Well, at that time, Your Honor, I

stated, if you will recall, to the Court that if the portion of the witness' report was admitted, we would like to have the entire report.

JUDGE BREITENSTEIN: Have it marked. We try to have orderly procedure to get the documentary evidence all at once. Go ahead.

MR. CAROSELL: Your Honor, I am put in a delicate position. This volume belongs to the Legislative Council.

JUDGE BREITENSTEIN: Did Mr. Kitchen get from you?

MR. CAROSELL: Yes.

JUDGE BREITENSTEIN: Did you get Mr. Carosell's permission?

MR. KITCHEN: I thought I did during the recess.

MR. CAROSELL: I think even the Governor lost his. They are hard to get. I had the Denver Public Library make a set for the Court.

JUDGE BREITENSTEIN: Are you objecting to the use of this copy?

MR. CAROSELL: I don't, so long as I am not held responsible for it, and I want it back.

MR. KITCHEN: Well, I will undertake to duplicate it, if Mr. Carosell desires and substitute another set.

JUDGE BREITENSTEIN: Whose copy is it?

MR. CAROSELL: This belongs to the Colorado Legislative Council of the State of Colorado. I borrowed it for the use of this Court, but not as an exhibit that I can't get back.

MR. KITCHEN: I simply ask that at an appropriate time we will ask—

JUDGE BREITENSTEIN: You understand, Mr.

Kitchen, if we receive this and then we will have to do it on the basis they can withdraw it and you will have to duplicate it?

MR. KITCHEN: Yes.

JUDGE BREITENSTEIN: Your client can afford to do that?

MR. CAROSELL: Yes.

MR. KITCHEN: Yes.

JUDGE BREITENSTEIN: All right, go ahead.

MR. CREAMER: If it please the Court, there is another problem. When we initially discussed documentary evidence, it was my understanding these documents were not the whole of the proceedings or whole of the report. They did not contain the so-called minority report, and they were a fragment of the matter, and that appears to have been one of the problems to begin with, and I fail to see—

MR. CAROSELL: The trouble is with Mr. Creamer he listens to himself so much, he doesn't—

JUDGE BREITENSTEIN: Just a minute. We don't like aspersions between counsel. We don't want that to happen again.

MR. CAROSELL: I apologize to the Court. There is a majority and minority report, which now formulate the entire report of Mr. Johnson's committee.

JUDGE BREITENSTEIN: All right, is it marked?

THE CLERK: These will be marked Intervenor's Exhibit C, and there will be one, two, three, four, five, six, seven parts.

INTERVENOR'S EXHIBITS C-1 through C-7 were marked for identification.

JUDGE BREITENSTEIN: Are there any objections to Intervenor's Exhibits C-1 through 7?

MR. BANGERT: No objection on the part of the respondent.

MR. CREAMER: We object to it, if it please the Court, on the basis on which we have objected to this entire line of testimony. I am very familiar with the report, as I am sure the Court is. It is a conspectus of the opinions of hundreds of people who said what they thought about who should be represented by whom where, but it has nothing to do with this particular problem, and it has really, moreover, not a place in the circumstance in which the witnesses themselves are introduced extraneously in the report after all documentary evidence is examined and the report is ruled out as brought in simply because a witness states he was the chairman of an executive committee that made it. There never was any problem about any identification of the report to begin with and substantively it is not more admissible now than when formerly excluded.

MR. CAROSELL: With the Court's indulgence—

JUDGE BREITENSTEIN: Mr. Carosell. Mr. Salazar?

MR. SALAZAR: If the Court please, I do object frankly on the same grounds as Mr. Creamer.

JUDGE BREITENSTEIN: Mr. Carosell, do you have any objection? Remember, I said objection.

MR. CAROSELL: No objection. I want to show the relevancy.

JUDGE BREITENSTEIN: I asked if you had an objection, not whether you were a proponent. The exhibit is going to be received. If you talk a little more, maybe I will rule it out. The exhibit will be received without any ruling on materiality, and I might say for the benefit of counsel, I see considerable merit in Mr. Creamer's argu-

ment on the issue. Go ahead, we want everybody to have their say here.

INTERVENOR'S EXHIBITS C-1 through C-7 for identification were received.

Q (By Mr. Kitchen) Mr. Johnson, I hand you these Exhibits C, which have been numbered by the Clerk through C-7, and ask you if these are the report of your committee that you have testified to?

MR. CREAMER: If it please the Court, the exhibits are admitted at this particular stage.

JUDGE BREITENSTEIN: Objection sustained. The exhibits speak for themselves.

MR. KITCHEN: All right.

Q (By Mr. Kitchen) Sir, before I get into the basis of reapportionment itself, I should like to ask you if during your long political career, you have had experience with facts of the legislation of representatives for the House of Representatives and the Senate from the populous counties of the State of Colorado?

MR. CREAMER: If it please the Court, I object to the question as being general in the extremest degree and without usefulness. The Governor has testified that the problem did not officially come to his attention.

JUDGE BREITENSTEIN: That's a preliminary objection. It is overruled. Go ahead.

A I didn't hear the ruling.

JUDGE BREITENSTEIN: You may answer the question.

THE WITNESS: I may answer it?

JUDGE BREITENSTEIN: Yes.

A (Continued) Certainly, I was acquainted with every member of the General Assembly, both in the Senate and House, the presiding officers and all the other officers of the legislature, during the time when I was a member of the General Assembly and during the period when I was presiding—when I was president of the Senate and when I was Governor of the State of Colorado. I had close relationship with all the members of the General Assembly from all counties, all districts in the State of Colorado.

Q Now, based on that experience, would you please state the effect of the present constitutional provision prohibiting subdivision of populous counties?

MR. CREAMER: I will not urge this at length, but I will make for the record the same objection heretofore made. It is outside the scope of the issues presented by the plaintiff.

JUDGE BREITENSTEIN: Yes, that objection will be noted, Mr. Creamer; and the materiality and pertinence of the testimony will be determined later. The witness may answer the question. Go ahead.

THE WITNESS: I didn't hear the ruling of the Court.

JUDGE BREITENSTEIN: You are permitted to answer.

THE WITNESS: Would you ask the question again, please?

JUDGE BREITENSTEIN: Read the question back.

REPORTER: "Now, based on that experience, would you please state the effect of the present constitutional provision prohibiting subdivision of populous counties?"

A I am sorry, I didn't hear the exact question, and it is technical.

JUDGE BREITENSTEIN: Your objection will be noted to the question as rephrased and the ruling will be the same. Rephrase the question.

Q Based on your experience, would you please testify as to the effect of the constitutional provision prohibiting subdistricting of populous counties?

A I can express an opinion on that question, if that's what you want?

Q Yes.

A It is my opinion that members of the General Assembly, both in the House and in the Senate, should not be elected at large, but should be elected from districts within those populous counties in order to give the people living in those districts the equity and the proper representation which they deserve.

Q Do you feel that the people in those districts are getting the equity and representation which they deserve under the present system?

A No, I do not. I believe there are a great many communities in populous counties which have never had a representative in either the House or Senate in all the years that Colorado has been a state, many areas.

Q Now, getting to a second question, with regard to the apportionment of representatives, and referring to your experience on the investigating committee that you testified to, the Governor's committee, and also your experience as a legislator, governor and United States Senator, I ask you whether you feel there is a rational basis for area representation as distinguished from strict population representation in at least one house?

A In at least one house, there is a basis, in my opinion.

Q What are the peculiarities in your opinion of the State of Colorado which require such a division in at least one house?

MR. CREAMER: To this again, we will make a general objection on the basis that there is no such provision in the present constitution and we are not here dealing with the problem of amount. I will not argue it, because I have previously done that.

JUDGE BREITENSTEIN: I understand the objection. The objection will be noted. It seems to me that this goes to the question of whether you have a rational districting or apportionment. The objection will be overruled.

A Was it ruled that I may answer?

Q Yes.

A Yes, there is a basis and that basis has to do with topography, with mountainous areas, with great distances, and with the great multitude of questions, legislative questions, which arise in the General Assembly on many, many points. For instance, a senator from my district in Colorado has to know a great deal about county government, about school government. He has to know a great deal about tourists and highways and railroads. He has to know a great deal about state-owned land. He has to know something about agriculture and the production of crops, and he has to know a great deal about coal mining and uranium mining and milling of uranium. He has to know a great deal about a great many subjects, and, yet, the population of the district in which I live is a very large district. It is composed of Moffat, Rio Blanco—no, I will take that back. It is composed of Moffat, Routt, Grand and Jackson Counties, and has an area of more than 5500 square miles and it does not have a population of much more than 21,000 people, according to the last census, and, yet, all of these varied activities. Human activities are dealt with by the General Assembly of the State of Colo-

rado, and it is very important that an area as large as that and having as many varied interests as that area does have should have representation, informed representation, in the Colorado General Assembly.

Q Now, are the district boundaries of the present Senate, and directing your attention to Intervenor's Exhibit B, are the district boundaries of the present Senate intended to give effect to the philosophy which you have just expressed?

MR. CREAMER: Now, just a moment. To this I must object on purely technical grounds. There is no indication whatsoever that the witness is qualified to state what the present existing boundaries are intended to do. He has stated specifically they were not done during any of the periods he was officially in office, and his opinion as to what someone else's intent may have been, though it is most estimable and worthy in many respects, is not proper on such a question.

MR. KITCHEN: I will rephrase the question.

JUDGE BREITENSTEIN: All right, go ahead.

Q Would the present Senate boundaries as shown on Exhibit B have a tendency in your opinion to give the effect of representation to those areas which you have stated as being desirable?

A Yes, sir, they would, and I want to say this, too, in addition to that question. On two occasions, in the year 1954, in the legislation of 1954, and the legislation of 1956, this question arose, the question of apportionment of the State of Colorado arose, and I voted on the question that was submitted to the people on the ballot in those two years, and they dealt very definitely with the apportionment of the Senate, which I have in my hand here, and in 1954 the people voted not to change the apportionment as delineated by this map which is in my hand, and in 1956 when the

question was directly whether the Senate should be apportioned on a strict population basis or upon an area basis, the people of the State of Colorado voted 349,000 votes against changing the apportionment as herein described, and the matter lost in 1956 by a majority of 191,000 votes plus, a little more than 191,000 votes, so I have had some—my vote was among those which supported the idea that the present delineation of senatorial districts was a proper delineation.

Q Now, with regard to that delineation, and the hearings which you conducted, what information—very briefly, would you outline to the Court what general information you obtained with regard to the economics in those districts and the other factors which the people in those districts have in common other than topography and the other matters you have mentioned?

A Well, in the hearings that were held, we had many witnesses and their testimony was varied. There was testimony on all points on this question, and on many points that I don't recollect as being valid points, but there was a great deal of testimony. I can't testify—I can testify that there was a considerable amount of testimony. I can't evaluate the quantity of it, supporting this delineation I have here in my hand.

Q Based upon that testimony, is it your feeling that the present senatorial districts have a rational basis, the boundaries of the districts?

A That is correct, sir.

MR. KITCHEN: No further questions.

JUDGE BREITENSTEIN: Mr. Creamer?

CROSS EXAMINATION

BY MR. CREAMER:

Q I understand, Governor, that it is your opinion that the present senatorial districts have a rational basis?

A Have a rational basis?

Q Yes.

A Yes, sir, that is my opinion.

Q Then I take it that you do not believe that there should be any change in the present senatorial districts?

A That is my opinion, that there should not be any change; that since it was in a way ratified by the people on two occasions within ten years, and based upon the topography of the State of Colorado and the scattered population and the activities of the people in the State of Colorado, I think that the present delineation of senatorial districts is as nearly correct as it could possibly be done.

Q I see.

A Under the circumstances in which it has to be done.

Q Will you explain, Governor, if there is a difference, why you consider that there is a difference between the Senate and House of Representatives with respect to the freezing of the present districts?

A Yes, I think that's based on the Federal plan in the operation of the Congress. We have two houses in Congress. One house, for instance, New York State, has forty-three Congressmen, forty-three members of the House, and fourteen states, of which Colorado is one, has forty-one members of the House of Representatives. I think that that's perfectly all right, because it is based upon a population, a population record, and I think that's very proper, and that it is all right, but in order to balance the activities

of the people, as against strict population basis, the Congress of the United States has another house and these fourteen great states, of which Colorado is one, have twenty-eight members of the Senate. That is the Federal system of representative government, and I think that it has proved its worth. I think it has proved its value. I think it has proved its adaptability through all the years our government has been operating in the development and growth of the United States of America.

Q Governor, the United States is in the form of a union of fifty sovereign states, is it not?

A That is correct.

Q The State of Colorado is not formed of a union of sixty-three sovereign counties, is it?

A That is also correct.

Q And the senate districts which you—

A It doesn't have any sovereign counties.

Q And the legislature is in fact at liberty to abolish boundaries of any county or to abolish the county altogether, at any session it may see fit, is it not?

A Well, the legislature has authorized the boundaries of practically all the counties in Colorado.

Q Yes, and the senate districts most certainly are not sovereignties in any sense or quasi sovereignties?

A They are not sovereign. The State of Colorado is sovereign.

Q Yes.

A But the county divisions in Colorado are not sovereign and I don't think that that is the important matter. I think the important matter is whether the people and the activities of the people and the occupations of the people—

Q Governor, why is there a difference between the sanctity of a Senate district boundary and the sanctity of a House district boundary?

A Why should there be a difference?

Q Yes.

A The Congress of the United States found that there was a difference and so they had two houses, one of them to represent the activities of the people and the other to represent the population of the people; and I think that's a happy combination. I think it gives us a balanced program of government for the United States.

Q Senator, you have made reference to your own county of Moffat?

A Right.

Q And the districts in which it is located. For purposes of the Senate, Moffat is in a district consisting of itself, Rio Blanco, Routt, Jackson and Grand. For the purpose of the House, it is in a district to which there is added Garfield County. Is there any—

A No, no, not in the House.

Q Pardon me, for the purpose of the House, from which there is subtracted Rio Blanco and Rio Blanco County is added to Garfield, Moffat, Routt, Grand and Jackson for the House, and the five counties for one and four for the other. Is there any historical reason why Moffat County should be in one aggregation for the Senate and a separate one for the House?

A Yes, I think that there is. Moffat County, so far as the House is concerned, is one county in four, and so far as the Senate is concerned it is one county in five, and I think that you have to go down to the work of the General Assembly to get the answer to it. Now, I believe that population is the correct way, as our founding fathers have

discovered with the United States Government, to set up a House of Representatives, and I believe that the Senate should not be identically represented to the House. Otherwise, why not have what Nebraska has, just one house, if you are going to have them identical in area and identical in every other way. You might just as well have a unicameral legislature, such as Nebraska has.

JUDGE BREITENSTEIN: Mr. Creamer, pardon me for interrupting. The Court is going to take its noon recess at this time. The Court will be in recess until 1:30 this afternoon.

(The Court recessed from 12:00 o'clock a.m. until 1:30 o'clock p.m.)

JUDGE BREITENSTEIN: Proceed, Mr. Creamer.

MR. CREAMER: Thank you, Your Honor.

Q Governor, with relation to the matter of the Senate districts, as I understand it, the amendment which you propose would alter the present Senate districts by merging Cheyenne, Elbert, Kiowa, Kit Carson and Lincoln into a single district, is that correct?

A Did you say Elbert?

Q Yes.

A Elbert with those other counties.

Q Elbert, Kiowa, Kit Carson, Lincoln and Cheyenne?

A That is correct, sir.

Q So that that would be a change of the present district situation?

A That would be a change.

Q Yes, and—

A A slight change.

Q Yes, and the proposed amendment would increase the representation of the present districts constituting Arapahoe, Adams, Jefferson and Boulder from one senator to two senators apiece, increasing the Senate from thirty-five to thirty-nine in membership, in that correct?

A That is correct, and that gives the surrounding counties around Denver an equal number of senators to the City of Denver. Each of them would have eight. The metropolitan counties would have eight and Denver would continue to have eight.

Q Correct, and that would also equalize the present situation of Pueblo County, which has two senators, and 118,000 people, and Adams and Jefferson, which each have over 120,000 people, but only one senator, is that correct?

A Jefferson County has—according to the last census, Jefferson County has 127,500, and Adams County has—

Q 120,296.

A That is correct.

Q And those in Pueblo County presently is 118,707?

A That is correct.

Q But Pueblo has two senators now and each, Adams and Jefferson, have only one now?

A That is correct.

Q Now, do you consider this an improper representation presently?

A Well, we considered it improper and that's the reason we changed the number of senatorial districts.

Q Right now, Governor, it is provided in the proposed amendment that those senate districts which would have more than one senator be redistricted on the basis of population periodically, but those which have only one senator remain frozen. Can you explain the reason for that proposal?

A If a district has one senator, you can't very well divide it and have a half a senator, but where there is more than one you can divide it and have as many districts as senators in the county.

Q What happens when the district that has only one senator grows to such level it should have two?

A If you have one senator from the—

Q On the frozen district senator principle. Assume you have a district that is frozen with one senator and it grows, as for example Mesa County might, since it seems to be growing on the western slope, until it reaches population which is where it has a right to two senators. What does it get under this scheme?

A Well, I don't know what you mean. There is no district frozen in the State of Colorado because the people have a right to each two year period unfreeze or to change in any way that they want to, so there is nothing frozen.

Q You mean, there must be a constitutional amendment each two years in order to keep the matter in order of population?

A I mean that the people have a right to make changes if they want to and there is a way for them to do it.

Q Thank you. Senator, presently the county of Weld has a population of 72,344?

A 343.

Q And the county of Boulder has a population of 742,054. Weld has two senators. Boulder has one senator. They are next door neighbors and rather similar counties. Is this a situation with a rational basis, in your opinion?

A Well, Boulder County is a county that has been growing very rapidly and Weld County is a county that, as I understand it, has been declining in population. You are reciting the population as shown by the 1960 census?

Q Correct.

A I am sure that Boulder County has made a considerable growth and is making considerable growth presently.

Q Governor, as a matter of fact, the census shows that the non-urban portion of Colorado lost six percent of its population in the last ten years and the urban part gained fifty-five percent in population, so isn't it true that these frozen areas are progressively losing in population as a whole?

A I don't know anything about what you mean when you say frozen. There is some change. However, so far as the activities are concerned, the human activities, in the districts that are districted to senators, these problems, these problems caused by human activities, has not changed them very much. They don't fluctuate so very much.

Q Then, Governor, is it my understanding that what is proposed is to represent economic problems and economic groups in the Senate and not people?

A Well, I don't understand it that way. You have to have—you have to represent in a legislature. A legislature deals with problems and these problems occur in areas that do not have as great a population more frequently than they do where there is a greater population. You can't pin everything to population, so far as legislative problems are concerned. Now, each of these areas and all of the areas in the State of Colorado under the proposal which we are making to amend the constitution would have representation in the General Assembly of the State of Colorado.

Q Governor, isn't it a matter of fact, and you certainly have more experience in the field than anybody here, the fact that any legislator as his legislative duty must represent and consider whatever economic problems affect the community of which he is a legislator, but he is

not elected because of economic problems or a representative of them, is he?

A Well, representative government means that many things are considered in that. It is not altogether people. Now, as long as we represent the people on a basis in which we have—where we give them equal representation according to population, then the population does have representation in the legislature, in the General Assembly as a whole.

Q Governor, presently 556,000 people elect 19 out of 35 of our senators, and 1,207,000 people elect 16 of our senators. Do you consider that economic requirement is such that one-third or, pardon me, one-fourth of the population must elect 52 percent of the Senate?

A Under the Federal amendment, the seven urban counties, starting with Pueblo, including Pueblo, El Paso, Arapahoe, Adams, Jefferson, Denver and Boulder, these very great urban counties under the Federal amendment would have twenty senators and the rest of the state, twelve times as large in area as this urban area, would have nineteen senators.

Q But that is not presently the case?

A That is not presently the case.

Q And if that is not presently the case, and if the case is as I have stated it, then there is something irrational in the present case, is that not so?

A Well, you can call it irrational, if you want to. It doesn't seem to me that that word describes what the situation is, but the fact that the Federal amendment has changed the situation that we now have and made an improvement in it so far as senatorial representation is concerned, I don't see why as long as we are making some improvement it is a recognition that nothing is perfect.

Q And it is a recognition that what we have is quite defective, is that not so?

A It is a recognition of the fact that this great urban area which we are speaking of, these seven counties, have shown a tremendous increase in population between the census of 1950 and the census of 1960, and the apportionment is supposed to recognize the results of a census.

MR. CREAMER: Thank you, Governor. I have no further questions of the Governor.

JUDGE BREITENSTEIN: Very well. Mr. Salazar, do you have any questions?

MR. SALAZAR: Yes, I do, may it please the Court.

FURTHER CROSS EXAMINATION

BY MR. SALAZAR:

Q Governor, your plan is known as the Federal plan, is it not?

A That is correct.

Q And yet it is not synonymous with our Federal system in the sense that the representation would not be the same as for the United States Senate, would it?

A Well, it is—the State of Colorado cannot be said to be identical to the United States of America, if that's what you mean.

Q And you do not intend to have one senator from each county or even one senator or two senators from each senatorial district, do you?

A No, indeed.

Q What you have done is arbitrarily go through the counties and have added some senators to those districts that you believe are increasing in population or have done so, and have left the other districts that have decreased

in population with their present Senate representation, have you not?

A Would you like it better if each county was given a senator in Colorado?

Q Governor, please, I am asking the questions, if I may.

A I wouldn't like it.

MR. KITCHEN: If it please the Court, I think we should object to the question, if this is going to be arguing with the Senator.

JUDGE BREITENSTEIN: Objection sustained. It is an argumentative question.

Q Governor, do you believe in your theory that you have for representation that no matter how limited the population becomes in a county, that it is still entitled to a senator?

A No, I don't think that any amendment to the constitution has in mind that it is going to be that way forever. I think that changes might come, and changes will come, and there are ways to amend any constitutional provision under the constitution and under the law.

Q Then the counties that at the present time are the senatorial districts that are decreasing in population, do you foresee that some of them, if they decreased to a great enough extent would lose their senatorial representation completely?

A It is my opinion that the counties in the western part of the State of Colorado are going to show an increase in population in the next census and it is also my opinion that the counties east of—in the eastern part of Colorado are going to show an increase in population. We will have to wait for the census of 1970 before we will know what is going to happen, but my guess is that these areas in

eastern Colorado, and especially the areas in western Colorado, are going to show an increase in population by 1970.

Q That's certainly possible, Governor, but under the present system, if they would reapportion as our constitution now states, they would of course again reapportion in 1970, would they not, and then they would gain their representation if they did have an increase?

A The people in 1970 will have an opportunity and a responsibility to apportion the State of Colorado in accordance with their views and in accordance with the necessity as they see it for reapportionment.

Q And also in accordance with our constitution, do you believe, Governor?

A In accordance with the constitution?

Q Yes.

A I don't know how the constitution will read in 1970.

Q And you believe that the people in 1960 have the same duty to reapportion with our constitution as it now stands?

A I think they have the same privilege, yes, sir.

MR. SALAZAR: No further questions.

JUDGE BREITENSTEIN: Mr. Bangert?

MR. BANGERT: No questions, Your Honor.

JUDGE BREITENSTEIN: Any other questions of this witness?

MR. KITCHEN: We have no further questions. Thank you very much, Governor.

JUDGE BREITENSTEIN: You are excused.

(Whereupon, the testimony of witnesses during this proceeding was concluded.)

REPORTER'S CERTIFICATE

I, Donna G. Spencer, Certified Shorthand Reporter and Official Reporter to this Court, do hereby certify that I was present at and did report in shorthand the proceedings in the foregoing matter;

Further, that I thereafter reduced that portion of my shorthand notes reflecting the testimony of the witnesses Little and Johnson to typewritten form, comprising the foregoing 49 page official transcript of testimony;

Further, that the foregoing official transcript of testimony is a true, accurate and complete record of the testimony of the witnesses Little and Johnson given during the proceedings set forth.

Dated at Denver, Colorado, this 27th day of May, 1963.

/s/ Donna G. Spencer

Donna G. Spencer

Certified Shorthand Reporter

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

ARCHIE L. LISCO, et al,
Petitioners,

v.

STEPHEN L. R. McNICHOLS,
etc., et al,

Respondents.

and

WILLIAM E. MYRICK, et al,

Plaintiffs
and
Petitioners,

v.

THE FORTY-THIRD GENERAL
ASSEMBLY OF THE STATE OF
COLORADO, et al,

Respondents
and
Defendants.,

FEDERAL PLAN FOR APPOR-
TIONMENT, INC., et al

Intervenors.

CONSOLIDATED

Civil Action No. 7501

Civil Action No. 7637

OFFICIAL TRANSCRIPT

Testimony

VOLUME I

Morning Session

May 6, 1963

Proceedings had before the HONORABLE JEAN S. BREITENSTEIN, HONORABLE ALFRED A. ARRAJ, and HONORABLE WILLIAM E. DOYLE, in Courtroom A., Main Post Office Building, Denver, Colorado, beginning at 9:30 o'clock a.m., on the sixth day of May, 1963.

APPEARANCES:

GEORGE L. CREAMER, Attorney at Law, and
CHARLES GINSBERG, Attorney at Law, Denver, Colo-
rado, appearing for the Plaintiffs in case 7637.

FRANCIS R. SALAZAR and **CARL HARTHUN**, Attorneys at Law, Denver, Colorado, appearing for the Plaintiffs in case 7501.

ANTHONY F. ZARLENGO, and **V. G. SEAVY, Jr.**, Attorneys at Law, Denver, Colorado, appearing for the Defendants. Also Present: **Duke Dunbar** and **Richard Bangert**.

RICHARD S. KITCHEN and **HARLEY WILLIAMS**, Attorneys at Law, Denver, Colorado, appearing for Intervenors.

CHARLES S. VIGIL, Attorney at Law, Denver, Colorado, appearing for Defendants.

PHILIP J. CAROSELL, Attorney at Law, Denver, Colorado, appearing as Amicus Curae.

WHEREUPON, during the progress of the hearing, the following testimony was adduced:

INDEX

Defendants' Witnesses:

JAMES GRAFTON ROGERS

Direct Examination by Mr. Zarlengo	6
Cross Examination by Mr. Creamer	27
Examination by Mr. Kitchen	45

EXHIBITS:

Plaintiffs' Exhibits:

1 through 12

Offered

Received

5

5

Defendants' Exhibits:

E through E-6

17

27

STIPULATIONS

MR. SALAZAR: That procedure would certainly be agreeable, if it please this Court, that Mr. Creamer may proceed. If we see fit, we may supplement. There is one point. Mr. Lisco, who is our plaintiff, is present in order to establish our class. We have not inquired of the fact of the respondents if they would agree Mr. Lisco is representative of the class, as a taxpayer. If they would do so, we could allow him to lease, if so.

JUDGE BREITENSTEIN: You allege he is a resident citizen, taxpayer and voter of the City and County of Denver?

MR. SALAZAR: That is correct.

JUDGE BREITENSTEIN: It is my recollection the respondents deny that recollection and belief. What's the position now?

MR. ZARLENGO: As far as we are concerned, Your Honor, if counsel says he is, we will so stipulate.

MR. SALAZAR: He is, Your Honor. He is present.

JUDGE BREITENSTEIN: All right, it is stipulated then. That's part of the record.

JUDGE BREITENSTEIN: Very well, those objections will be noted and the exhibits will be received.

PLAINTIFFS' EXHIBITS 1 through
12 were received in evidence.

JUDGE BREITENSTEIN: Mr. Creamer, I meant to mention this earlier and overlooked it. In your complaint, you allege the residence, citizenship and capacity and what not of those, your plaintiffs. Those were all denied, as I recall, on information and belief.

MR. CREAMER: They were, but I think that matter was clarified by a stipulation rather similar to the stipulation that was made this morning concerning Mr. Lisco sometime during the previous proceedings.

JUDGE BREITENSTEIN: That's my recollection. I just wanted the record straight on that so there would be no question about their status.

MR. ZARLENGO: If there is any doubt about it, Your Honor, we will so stipulate.

JUDGE BREITENSTEIN: Very well.

MR. CREAMER: Thank you, Your Honor.

TESTIMONY

JAMES GRAFTON ROGERS

called as a witness by the Respondents, being first duly sworn, on his oath testified as follows:

DIRECT EXAMINATION

BY MR. ZARLENGO:

Q State your name, please?

A James Grafton Rogers.

Q Where do you reside, Mr. Rogers?

A Georgetown.

Q State of Colorado?

A Yes.

Q And you have been a resident of Georgetown how long?

A About twenty years?

Q And a resident of the State of Colorado how long?

A I was born in Colorado, and I was a resident here for about forty years, and then was away five or—about ten years, in New York and Connecticut, and then returned here.

Q Mr. Rogers, would you tell the Court about your educational background?

A I was born in Denver, educated first of all in the Denver public schools, then later at St. Paul School, Concord, New Hampshire. I graduated from Yale with a degree of Bachelor of Arts, and then was a newspaper reporter in New York for two or three years. Then studied law at the University of Denver and graduated in the University of Denver in law in 1908. In dealing with my educational background, I was Dean of the Law School of the University of Denver for about a year and taught there for about twenty years. I was afterwards Dean of the Law School of the University of Colorado, was absent there for two years as Assistant Secretary of State of the United States, returned there and went from there to Yale, where I was Master of one of the colleges at Yale, dealing with Government, taught in the Law School of Yale, and also taught government in the undergraduate and graduate schools of Yale. I resigned from Yale in 1942 and returned to the Government of the United States. I served in the Joint Staff for three years. I left there and went to New York, where I practiced international law, particularly international financial law, for ten years, and that led to my retirement from everything except nominal connection with various organizations. I have a number of honorary degrees.

Q Would you tell us about your honorary degrees, Dean Rogers?

A I have honorary degrees of Doctor of Laws from the University of Colorado, from the University of Denver, from the University of Columbia, from Yale and from the University of Pennsylvania.

Q You practiced law for a number of years also?

A I practiced law in Colorado for about twenty years initially.

Q When were you admitted to practice law in the State of Colorado?

A 1908.

Q Have you been admitted to practice law in any other states?

A Yes, New York, Connecticut and before the Federal courts, including the Supreme Court of the United States.

Q Dean Rogers, will you tell the Court about your experience in Government, either as a teacher or student of government or any other capacity?

A On graduation from law school, I was immediately appointed Assistant Attorney General of Colorado, and served for two years. I then went into private practice. I have taken a very active part in all sorts of governmental affairs, having served on a number of commissions and advisory boards in the City of Denver, also in Boulder and in Connecticut. I have been in a number of special assignments connected with the United States Government, most of them foreign, however, rather than local. I served as Assistant Secretary of State of the United States from 1931 to 1933, and then as I said before returned to the Government and served in the United States Joint Staff as chairman of a board on political problems and under-

group and intelligence and gorilla warfare in the Joint Staff for two years, nearly three years, at the end of the war. I have since then—my largest occupation has been dealing with foreign governments. I conducted negotiations on one topic or another for I suppose twenty or thirty nations in connection with the interests of the United States. I think that covers that.

Q Have you made a study of the history of Colorado? I want to get this podium where I don't block counsel. I wonder where would be the best place to put it? Is this all right?

MR. CREAMER: Fine.

A I have taken a very active interest in the history of Colorado from boyhood, and I have been very familiar with the geography and the physical conditions. My father was an engineer, and as a child he took me all over the state in connection with railroads and mining. My earliest recollections are connected with geography of the state. As regarding its history, I have never written any lengthy work in regard to Colorado history, but I have written a number of articles running in various magazines and various journals, scholastic journals, in regard to Colorado history. Since about 1930 I was elected a director of the State Historical Society, and took an active part in the State Historical Society until I left on the foreign jobs that I have referred to. When I returned to Colorado in 1950, I was elected President of the State Historical Society and for ten years following that devoted a large part of my time, perhaps a third or half my time, simply as a volunteer in that work, administering the affairs of the State Historical Society, its museums, various activities and lectures and so on. Three or four years ago I retired from that and am now Chairman of the Board of Directors of the State Historical Society.

Q What is the purpose and function of the State Historical Society?

A The State Historical Society is a very old institution founded in 1879 by a number of leaders of Colorado affairs. It is a branch of the state government. It is controlled by its own membership, but it is supported by appropriations of the state government. Its function has been to preserve, to study, to publish and in recent years to conduct a number of museums scattered through the state. We have eight or ten such museums outside the City of Denver, scattered all through the state, from Montrose in the far west—I am stating them because they indicate our familiarity with the state—from Montrose, Fort Garland in the San Luis Valley, a museum at Trinidad, a museum in the City of Pueblo, a museum called Fort Vasquez at Platteville, which is now under development, a museum at Leadville, one or two others.

Q I believe you have stated that you did teach government at Yale?

A I did.

Q For a number of years? Did you teach government anywhere else?

A No. Law, but not government.

Q I see, but you teach it?

A I have taught law in I suppose ten schools as a visiting lecturer and as well as a professor, including Oxford and Cambridge.

Q I see. When did you lecture at Oxford and Cambridge?

A One case in 1936, again in 1953, I think.

Q Dean Rogers, have you had occasion to testify in various courts in connection with either the history of Colorado, the water problems of Colorado, or anything of that kind?

A. No, not as a witness. I have tried a number of cases involving economic problems of Colorado. For many years I devoted myself almost wholly to the practice of water law and in the course of that tried cases representing Colorado interests in water particularly, but I can't remember ever being a witness.

Q So you are familiar with the water problems of Colorado. Are you familiar with the topography of the State of Colorado?

A Yes, I think so.

Q And the geography of the state?

A Yes, intimately.

Q Dean Rogers, would you state in general the topography of this state?

A Colorado is unique among American states in its complicated topography and in the division of the state into a large number of isolated sections divided by mountains, streams and canyons. There is no state in the Union except perhaps Philadelphia which even compares with the complicated geography of this state. We think often of the state as simply divided by the Continental Divide, but the fact is that the western three-fifths of the state is made up of a series of mountain ranges, which suggest little waves on the sea, one after another. Those mountain ranges have been the chief economic problem of Colorado from the beginning, and the conquest of the passes, the means of getting back and forth through the state, the means of communication through the state, have, as I see it, been next to water the major physical problem that the state has met. If you want me to go into a little more detail, I will do so, but that is the general statement.

Q Yes. Are you familiar with the reapportionment history of the state?

A Yes.

Q Will you tell the Court what the reapportionment history of the State of Colorado is?

A Yes. Let me state first that my familiarity with this is based on—what I know of it is based on two or three different sources. I took part in 1911 in a study for apportionment for the legislature when I was Assistant Attorney General. I also did some work in connection with apportionment at two other subsequent sessions of the legislature and have therefore been fairly conscious of it. My family has been so active in public affairs that I seem never to have been out of touch with this problem. Pursuant to the request of the State, I made over the last few months as detailed an examination as I could of the apportionment proceedings of the State. There is practically nothing available in print in regard to the motives of the legislature or to the discussions in the legislature in connection with apportionment. There are here and there some fragments. In recent years the legislature has made a rather methodical study of apportionment, and there have been some reports on that which have been available to me. The newspapers contain almost nothing about the detail of apportionment in the state. If they mention apportionment at all, it is very general. There has been almost nothing written on it of any value except some PHD theses and MA theses, three or four of which I have seen, but which contribute practically nothing in this regard.

Therefore, what knowledge I have of the apportionment history of the state is based, first of all, on some contact of the kind that I have stated on my own, and, secondly, on a great deal of contact with the legislative leaders, governors and that sort of thing, in the state, and, of course, are often discussing this problem, and, finally, on the examination that I have made of the history of apportionment as represented by the records, the official records, and anything that I can say in regard to it, in regard to the reasoning for it, for these apportionments, for the

districting of the state and for the motive behind it, is gathered from those sources.

It is possible, I think, in going over the history of apportionment in Colorado, to see conspicuously that the legislation reveals the problems that have troubled the legislature and reveals the kind of action they have taken on it, the apportionment.

I have the following general observations, if that's what you want me to describe. In the first place, there have been nine apportionments in Colorado since the organization of the state. The state was redistricted after every census except 1920 and 1940. Those two censuses did not alter much the shift in population in the state and a redistricting would have been relatively minor in any case.

Prior to the inauguration of the state in 1876, there were nine—there were three apportionments in the sixteen years of the territory, so that in the whole history of the state, from its territorial organization through its state organization, we have twelve apportionments, and let me say, because I am familiar with the history more or less that this is an unusual amount of activity in regard to redistricting a state. It is rare in the United States that so much action has been taken.

Q Have you prepared maps of the various apportionments?

A Yes. I have not maps of all of them. What I did was to pick out. This is very laborious, the working of these maps, and indeed it is very difficult to find the apportionments themselves. They are not indexed in any fashion that a lawyer thinks as comprehensible. The only way to do, and this I have done, is to go over page by page the statutes of Colorado from the inauguration of the territory in 1861 up to 1961, up to the last year or two. They are indexed in ways which sometimes are under "Constitution", sometimes under "Apportionment", sometimes under

"Reapportionment", and there is no way to follow it except page by page. The result is very laborious. I have, therefore not attempted to map all of the apportionments, but I have here maps of—

MR. ZARLENGO: Pardon me, Dean Rogers. I think the State has prepared some maps which I just received this morning. We would like to have them marked at this time.

THE COURT: Very well.

MR. ZARLENGO: Oh, you have the maps?

THE WITNESS: The State has given me copies of my maps which were my work maps. I have not had an opportunity to go over these in detail, but I have no doubt they are photographic reproductions of my own maps, and I have here my own maps which I will refer to myself.

JUDGE BREITENSTEIN: Maybe you better have these marked as exhibits, Mr. Zarlengo, before we start to refer to them so the record will be straight.

THE WITNESS: Now, how many do you want?

MR. ZARLENGO: One for each apportionment. Does Your Honor want a copy?

JUDGE BREITENSTEIN: Yes, it will be helpful if you have them. Have the other attorneys seen these?

MR. ZARLENGO: Yes, there were sufficient copies to go around.

DEFENDANTS' EXHIBITS E, E-1, E-2, E-3, E-4, E-5 and E-6 were marked for identification.

Q I hand you a group of maps that have been marked E, E-1, E-2, E-3, E-4, E-5 and E-6.

A I thought there were seven.

Q The first we marked E instead of E-1.

MR. CREAMER: Mr. Zarlengo, it is E through E-6?

MR. ZARLENGO: Yes, both inclusive.

Q Will you state what these maps represent?

A These seven maps represent a charting of the apportionment of the Senate, not of the House, made through the years between 1861, 1891, 1901, 1913, 1932 and 1953. Let me say in explanation this is not all of the apportionments. I tried to pick out the important ones, rather than cover them all. There are some apportionments which I did not include in my list which involved only one or two counties or three or four counties instead of the redistricting of the whole state, and those I have not counted at all as being apportionment. In other words, there is an awful lot of legislation in addition to this, but it is minor and these are the critical big factors.

MR. ZARLENGO: At this time we have copies for each of the judges and for counsel. Mr. Bangert, would you mind distributing them?

JUDGE BREITENSTEIN: Are you offering these exhibits in evidence?

MR. ZARLENGO: Yes, Your Honor, subject to examination by counsel, we would like to offer these.

MR. SALAZAR: If it please the Court, it was my understanding that counsel were to get copies.

MR. ZARLENGO: He is getting them.

JUDGE BREITENSTEIN: Just be patient for a minute, and I think we will get them to everybody.

MR. ZARLENGO: Mr. Bangert will have them there in just a moment.

Q (By Mr. Zarlengo) Dean Rogers, from your study of apportionment in Colorado, would you state whether

or not in your opinion there has been an attempt made to balance area and economic interest representations in the Senate?

MR. CREAMER: If it please the Court, may the question be repeated? I couldn't hear the last.

JUDGE BREITENSTEIN: Would you read the question back?

(The reporter read the pending question aloud.)

MR. CREAMER: If it please the Court, I would respectfully object to the question on the ground the problem whether there has been an endeavor to balance area and economic representation, whatever that may mean, is first singularly nebulous. Secondly, if the question is asked with reference to the exhibits submitted, and I trust it may have some connection with them, it would be impossible from the exhibit to say anything about it because there is no statistical data of any kind included on the exhibits—there are some boundaries—and thirdly, because the opinion whether or not there has been an attempt to balance area and economic considerations, whatever they may mean, is not germane to the issue in this action.

JUDGE BREITENSTEIN: Mr. Creamer, those objections will be noted. This is a trial to the Court. I think the points which you raise go more to the weight, which the Court will give to this type of testimony, than to legal admissibility. The objection is overruled.

MR. CAROSELL: May I observe for the Court, Your Honor, that Exhibit E, Amicus Curæ, Reapportionment of Colorado General Assembly, by the Colorado Legislative Council, covers substantially all of these maps, and so does the Colorado Year Book, which has been admitted into evidence? I only point out that these matters are corroborative, and indicate nothing more.

JUDGE BREITENSTEIN: Very well.

MR. ZARLENGO: Dean, do you still remember the question?

JUDGE BREITENSTEIN: Let's read the question again, please.

REPORTER: "Dean Rogers, from your study of apportionment in Colorado, would you state whether or not in your opinion there has been an attempt to balance area and economic interest representations in the Senate?"

MR. CAROSELL: May I ask how that's connected to these exhibits?

JUDGE BREITENSTEIN: Are you making an objection? If so, your status here is such I don't see how you can make objections for the record.

MR. CAROSELL: No, no, you are permitted to appear here, Mr. Carosell, by the permission of the Court, and we are willing to receive the exhibits which you have, but so far as the objections to testimony are concerned, I think we will have to confine those to the objections of the attorneys of the parties.

THE WITNESS: Want me to answer?

Q (By Mr. Zarlengo) Do you have in mind the question, Dean?

A Yes, I think that the record shows that throughout the history there has been an effort to take into consideration the factors you mentioned, and a number of others.

Q What other factors were taken into consideration?

A Population, of course, because that was the fundamental basis for it, but population up to the date of the present amendment was considered in connection with the terms of the constitution, which did not require a representation by count of heads. Do you want me to continue?

Q Yes, if you would.

A The constitution of Colorado provides for a formula for the distribution of the senatorial and representative offices. It provides under what is sometimes called the Elihu Root or Pennsylvania conception of policy, that the legislature in arriving at a distribution of the Senate and the House shall first of all establish what the constitution calls a ratio, and that ratio as interpreted by our legislature and also with the approval of our courts has meant that in connection with population there should be a formula set up under which the allocation of senators and representatives should be based on the number of senators or representatives in any given district. In other words, roughly speaking, the legislature throughout its history up to the present amendment has in each case of apportionment either set up or maintained a ratio already set up from a previous time which provided that roughly speaking—I am generalizing very widely—"X" number of voters, "X" number of population, should entitle a district to one senator and a larger number, normally about two "X", should provide for second and subsequent senators.

The legislature also included another conception, which was that if a district had one "X" population, but not two "X", that it could be entitled to a second senator for something like one and a half "X", and that formula, that method of calculation, which seems to have been never contested and universally accepted, resulted through the years in the legislature for each apportionment adopting a formula of that character.

Therefore, the effort to meet a per capita, per head, standard, a numerical head, was never assumed in the legislature from 1876 to 1962.

There is nothing novel in this in Colorado. This is today in one form or another a principle which the vast majority of the states have followed since about 1850. Initially, most of the states started out to distribute their legislature on the basis of a count of heads. There were

two or three states which did not have bicameral legislatures originally, but those two or three abandoned the unicameral legislature and adopted the bicameral one and there is now only one state in the Union, Nebraska, which has a unicameral legislature.

They started out, most of the states, with the idea of distributing the legislature on the basis of a count of heads. Beginning with about 1850, there was a change, in that, and one legislature after another, one constitution after another, adopted a principle that the small communities should have a larger representation than the heavily populated areas.

It took various forms, and that among the students of American government is known as the Elihu Root or Pennsylvania conception of distribution.

Q Is that what is known as the ratio system?

A No, it is often areal instead of ratio.

Q Areal?

A Yes. For example, if this is important, New York, Pennsylvania, Rhode Island, among conspicuous states, have had provisions that no one county or city should have a larger representation than the small limit. For example, three senators, or something of that kind. That rule prevails today in New York. It has prevailed in the majority of the states in the Union in one form or another.

Some of the states have adopted what is called an areal principle, providing that no one area, as I have said, should have more than a certain amount of representation. Others have adopted a ratio system of the kind that I have described here, that is not based on area, but based on weighting population.

Q What system was in effect in Colorado?

A The ratio system.

Q And what was the effect of the ratio system insofar as giving representation to less populous counties?

A Well, as I tried to say before, and I will try to state again, the effect of the ratio system is to give a small community more representation than the densely populated communities. As applied in Colorado, this was not—this did not have the effect of militating against Denver exclusively. In almost all of the applications of this ratio system which occurred, there were other counties outside of Denver which suffered more in the way of reduction of representation by the fact that they were heavily populated, but basically it was aimed at the idea that the heavily populated communities were dangerous if they were given the same representation that the less populated communities were given.

Q What effect did it have in the way of giving representation to various economic interests, mining communities and so forth?

A That would fall outside of that. Throughout, it is evident, as I tried to say before, that the legislature was interested in dealing with economic problems, the peculiar economic interests of the various parts of the community, such, for example, as mining and farming, and also it gave attention to social background. For example, the communities with heavy Mexican population were grouped together in some form or in various ways dealt with.

In addition to that, I would think that the fourth big factor that appears in the acts of the legislature is the geographical factor. They have throughout their history tended to favor in representation the mountain counties, and have experimented over and over again with an effort to try to tie together mountain counties which had means of communication and common economic interests, and were not divided in a way in which they couldn't be reached.

If I may illustrate, I realize these are generalizations and a little hard to follow. For example, in many communities which are contiguous, there is almost no actual traffic because mountain ranges and valleys and canyons—they have tried to tie together communities, not only which had a common economic interest, a common social background, but which could be united in a fashion in which a representative or a senator was able to reach his people, and in addition to that another factor appears continuously through this history, which is the—what the legislature seemed to think was a disastrous result in tying together a big county and a little county because if they put a big county in a group with several little counties, it practically denied representation to the little counties because the only senator or representative that would be elected would be someone known to the big county and usually a resident. Those are the factors I am most conscious of.

Q By big county, you mean one that has a more populous—

A Correct. I mean not in area, but in population.

Q Are you familiar with Amendment Number 7 that is under discussion here today?

A Yes.

Q Have you made a study of that amendment?

A Yes.

Q Will you state, Dean Rogers, whether or not in your opinion Amendment Number 7 insofar as it pertains to the apportionment of the Senate has a rational basis considering the historical, economical, social and geographical and topographical background of the state?

A Yes, if rational means reasoned in the sense of having it a historical, economic, social, geographic or a similar series of factors, I think that the distribution in the

Amendment Number 7, in the Federal amendment, includes consideration and recent consideration of all those factors.

MR. ZARLENGO: That's all we have, Your Honor. Your Honor, I have offered and I reoffer, subject to examination of counsel, these exhibits, E through E-6.

JUDGE BREITENSTEIN: Are there any objections to Exhibits E through E-6?

MR. CREAMER: No objection.

JUDGE BREITENSTEIN: Those exhibits will be received in evidence.

DEFENDANTS' EXHIBITS E through E-6 were received in evidence.

JUDGE BREITENSTEIN: At this time the Court will take a ten minute recess. Court will be in recess for ten minutes.

(The Court recessed from 10:40 o'clock a.m. until 10:50 o'clock a.m.)

JUDGE BREITENSTEIN: Mr. Zarlengo, had you concluded your examination of this witness?

MR. ZARLENGO: Yes, Your Honor.

JUDGE BREITENSTEIN: Is there any cross examination?

MR. CREAMER: Yes, Your Honor.

JUDGE BREITENSTEIN: Very well, proceed.

CROSS EXAMINATION

BY MR. CREAMER:

Q Dean Rogers, with relation to the exhibits which have been marked E-1 through E-7, I will call your attention to the first of those, which has been marked E-1, and relates to an 1881 apportionment.

JUDGE BREITENSTEIN: Pardon me, it was my understanding that that was marked E.

MR. CREAMER: Oh, E; I guess that's right. It is E and then E-1.

JUDGE BREITENSTEIN: Yes, I think the 1881 is E.

MR. CREAMER: It is E and the others are E-1 through 6.

JUDGE BREITENSTEIN: I just wanted the record straight.

MR. CREAMER: Thank you.

Q With relation then to the first of them, E, which is the 1881 apportionment, you will note on that map the tier of counties to the east, being from north to south, Weld, Arapahoe, Elbert, Bent and Las Animas, it is not that between 1881 and 1891, represented by E-1, the next map, that entire eastern tier of counties was subdivided into a much larger number of counties, is that correct?

A Yes.

Q So that the county units themselves, as they presently exist have been materially changed by legislative action and during the apportionment history you have mentioned, is that correct?

A That's correct. The counties, of course, have been constantly changed, I have a map here showing the historical progression of them.

Q Yes, that has been a pronounced feature of Colorado arrangements. We have changed boundaries of counties from time to time as administrative conveniences have required, is that not so?

A Yes, Mr. Creamer, up to I think the year 1913. There have been no changes since 1913, according to my recollection.

Q I believe you are essentially correct in that.

A Yes, the last change was in 1913, with the I think establishment of Alamosa County, that's correct.

Q And those several changes in boundaries are reflected on your maps, E, E-1, E-2 and E-3 and E-4, is that correct?

A Yes.

Q Now, Dean Rogers, you have concerned yourself in the preparation of these maps and in your testimony have primarily discussed the Senate of the State of Colorado?

A Correct.

Q Rather than the Senate and House, and on Mr. Zarlengo's examination you made some reference to the constitutional basis for apportionment of the legislature and explained your view of the ratio matter and its relation to the Pennsylvania matter. The constitutional provision during the whole of the period covered by the several maps in your E series was Article 5, Section 45, providing that the General Assembly shall provide by law for an enumeration of the inhabitants of the state in the year of Our Lord 1885 and every tenth year thereafter, and at the session next following such enumeration and also at the session next following an enumeration made by the United States, shall devise and adjust the apportionment, the ratio to be fixed in the Senate by law. That is the provision to which you had reference?

A Yes, sir.

Q Dean Rogers, is there in your opinion and to your knowledge, and has there been at any time during the periods covered by your exhibits in the E series, any differ-

entiation made by the Colorado constitution as to the formula to be used for apportionment of the House of Representatives and the formula and basis to be used for the Senate of the State of Colorado?

A I don't think I understand the question. I am sorry.

Q Constitutionally, has there been during the period covered by your maps any difference made, any distinction in the constitution, between the method of apportionment prescribed for the Senate and that prescribed for the House?

A None between the Senate and House. The same rule applied to both of them up to the adoption.

Q Of Amendment 7?

A This Amendment 7.

Q Then in your opinion during the whole of the period that we have had involved up to Amendment 7, would there have been any basis constitutionally, any historical or other basis, for a differentiation in the mode of prescribing membership for House and for the Senate?

A The fact that the Senate is elected for four years while the House only for two might be a factor that would affect the legislature in making an apportionment. That's the only one that occurs to me.

Q Yes, now, you have stated when asked by counsel to relate the historical factors relative to the Senate, and I think I quote reasonably accurately, population, of course, for that is the fundamental basis of it, and then you proceeded to set forth several other factors. I take it then that population is in your opinion historically a necessary—one of the necessary, at least, determinants for the Senate apportionment?

A Yes, the constitution so provides.

Q Yes, in fact, the constitution doesn't really provide anything else, does it?

A No.

Q Very well, Now, do you consider then that population is presently one of the factors which ought to be considered in the apportionment of membership to the several constituent Senate districts?

A The effect of Amendment 7 is to wipe out the previous constitutional provisions which included recognition of population and also ratio. Therefore, at the present time—I am speaking now as a lawyer—at the present time, the people have amended the constitution to a point where they do not require a distribution of population for the Senate.

Q Yes, and under Amendment 7, though population you state historically has always been the first of requisites, population has been eliminated entirely as a requisite, is that correct?

A Under Amendment 7 for the Senate?

Q Yes?

A As contrasted with the House.

Q There has in fact simply been a taking of the pre-existing Senate districts, with one minor variation of translation of the counties, cities, as I remember, and then an addition of four members and a freezing of the districts, is that correct?

A Yes.

Q And this does not have any necessary relation to the population presently and certainly none in the future, is that correct?

A Amendment 7 removes the mandate to consider population in the hands of the legislature.

Q Very well, but it is your testimony—

A Now, of course, that doesn't mean—let's be realistic about it. That doesn't mean Amendment 7 doesn't consider population, because under the Senate, and the Senate as provided in Amendment 7, has taken into consideration, population in the distribution.

Q The Senate, as provided in Amendment 7, simply froze the 1953 distribution, did it not, and added four senators?

A Correct, with slight changes.

Q Now, Dean Rogers, are you able to give us in your opinion, because the last question asked concerned that, any historical reason why the county of Las Animas should have one senator representing 19,983 persons and the county of Pueblo, immediately to the north thereof, should have two senators representing 118,000 persons, or approximately 59,000 represented by each senator, as compared to Las Animas' 19,000? Is there a historical basis for a three to one differential in favor of Las Animas, in your opinion?

A There is a historical reason for the recognition of Las Animas County as a unit. Las Animas County, from the beginning of Colorado history, was a very individual county and throughout its history, with one possible exception, Las Animas has had its own senator.

Q Las Animas County, as a matter of fact, in its inception was an area which included Las Animas and Baca Counties and was subdivided into two counties, is that not true?

A That's true, and as a matter of fact, it—yes, it covered Baca. Yes, Baca, and Las Anamis. Of course, there is nobody lives in Baca.

Q There is hardly anyone who lives in Las Animas, is there? I do ask you seriously can you give us any reason

why a citizen and resident of Las Animas County is entitled to three and one half times the voting strength of his neighbor immediately to the north in Pueblo County?

A Of course, Las Animas County, you have picked out because by a slight margin it is the county most favored in regard to senatorial representation. The margin is very slight.

Q The margin between 19,000 per representative and 59,353 I do not find slight, and I selected it, Dean Rogers, not because it is a slight margin, but because I am asking you whether you can give us a rational basis for a three to one deviation as against Las Animas as against Pueblo immediately adjoining it, there not being as I remember any superficial boundary which divides Pueblo from Las Animas?

A What I was trying to suggest is that while Las Animas happens to represent a population of 19,900 for one senator, the other representation in other counties is equally discriminatory in that sense. For example, District 24, which includes the county in which I live, with Gilpin, Clear Creek, Park, Teller and Douglas County, is given a senator for 20,909, which is almost the same as Las Animas.

Q Yes, I think that's a very interesting point. Can you give me any historical or rational basis why Chaffee, Park, Gilpin, Clear Creek, Douglas and Teller should have for 20,909 persons one senator, when the county of Jefferson, immediately adjoining them has for one senator a population of 63,760?

A Yes, historically there are reasons for both. As I have stated, in the case of Las Animas, Las Animas County has from the beginning been treated as a unit. Now, if I may explain. There are some counties in Colorado with this history. Originally, Weld County, Larimer County, Las Animas County and Boulder County, for

example, were all highly organized individual counties with a certain character to them, which led to an effort to give them separate representation, and I count Las Animas County in that field, and, indeed, Weld County is also favored in the sense of representation, because it has three senators, each one of whom only represents 35,000 people.

In the case of Larimer in this particular allocation that isn't so striking, but it is still favored.

Now, the reason for the other group of counties is different historically, and what I am trying to do is interpret what it seems to me the legislature has been concerned with. When it comes to the little mountain counties, little in terms of population, the legislature has tried to give representation in the first place to their geographical problems, and in the second place to their economic interests, and all of the mountain counties, all of the counties in the western three-fifths of the state, speaking roughly, have been given very favorable treatment as regards the per capita measurement of representation, but it is scattered. For example, the legislature has recognized obviously that the prairie counties, Kit Carson, Elbert, Lincoln, Cheyenne, and Kiowa, which have small populations, have large area and a special type of agriculture, which is different from the river valleys, were entitled to representation for that sort of interest, and there are similar factors. I don't cover this too greatly.

Q Is there any possible basis you can give us which determines how much representation each of these interests is entitled to? Is there any formula, in other words, by which you determine how much the representative predominance of a dry land farm community must be over a wet land or irrigated farm community? How much you determine such a community must be predominated over by a mining community? How much the population of a city must be dominated either by one of these farming

communities or by a mining community? What is the measure by which you equate these several economic interests?

A I do not know.

Q Is there any?

A I think that the representation of outright count of heads of population has been overruled in the legislative mind and in the drafters of this amendment, who were not the legislature, by geographical and economic and other factors which the state has always considered and other states have considered.

Q In other words, it is your testimony that though the constitution of the State of Colorado has historically contained nothing but a population statement historically, the legislature has ignored that matter and the matter of its ignoring it has now been concretized in the form of Amendment Number 7, which formally and absolutely denies population in the Senate, is that correct?

A No.

Q Where am I mistaken in my formulation of the question?

A You are mistaken in the statement, Mr. Counselor, that the constitution of the state required a distribution on the basis of per capita count. It does not.

Q Do you find anywhere in the constitution a justification for a discrimination between the Senate and the House in modality of representation?

A Not under the constitution.

Q Do you find anywhere in the constitution a statement for differentiation between dry land farms and river bottoms?

A The constitution does not state all of the factors that need to be taken into consideration. The constitution

states certain limits on the freedom of the legislature to consider all sorts of factors, geographical, economic, social and historical. It is simply a limitation on the power of the legislature in which they say you must not go beyond these factors; these factors being, first of all, population, and, second, a ratio system, under which the factor of population is greatly tempered and altered.

Q Dean Rogers, you include in your series E exhibits as E-5 a 1932 apportionment. Is that a legislative apportionment? It is next to the last of the series of maps.

A One of the apportionments is an initiated measure and I am just fumbling to remember which one it is.

Q 1932, I think.

A '32. I will check it in a minute.

Q It was an initiated measure, but I wondered if your map reflected that or the legislative one?

A No, the 1932 was an initiated amendment apportionment.

Q There was a legislative one made in that same period, was there not?

A The legislature in 1933 passed another apportionment, varying from the 1932 apportionment.

Q And it was declared unconstitutional and invalid and void?

A Correct.

Q Very well. Dean Rogers, it is a fact, is it not, that the history of the mountain mining communities from the height of their prosperity in the '80's to the present time has been a continuing history of relative loss of population?

A Yes.

Q It is a fact, I believe, that Georgetown, in which you are presently a resident, was at one time a community of approximately fifteen to twenty thousand persons, is it not?

A Not as large as that. I think somewhere between five and ten thousand.

Q Central City, which now has some 300 persons, was a community of a number of thousands, was it not?

A Correct.

Q And this was true also of a great number of communities in the mountain area?

A Right.

Q And these communities have in some cases wholly and in others largely physically disappeared with the passing from the scene of the mining industry, is that correct?

A They have shrunken vastly.

Q And there has—

A Of course, they now have become recreation communities. They are no longer mining communities.

Q I think that is true. Do I gather then that they are to be read as recreation centers, and I believe that there has been a similar movement of population out of farm areas generally and into the larger cities in the state, is that correct?

A There is very little falling off in population in the river valleys which make the irrigated farming area. There is some reduction, but it isn't very substantial. There was a very much larger population in the eastern dry land counties than there is now.

Q Yes, now, as I understand it, one of your statements in examination by counsel was that it is a belief of the persons advocating population on the Pennsylvania

basis, as I understand it, that heavily populated areas are dangerous, if given equal representations. May I ask to whom they are dangerous?

A Dangerous to the welfare of the state. Elihu Root, who is the most famous and best known spokesman of this point of view, said in the conferences for the New York constitution in the 1890's, I think in 1894, that the heavily populated areas should not be represented as generously as the rural areas, because the cities from their very fact of population could organize in a way in which they had much greater strength. They were subject to political machines, subject to the activities of chambers of commerce and various other organizations, elements which were not applicable to rural areas, and he therefore carried successfully an amendment to the proposed constitution of New York which limited the representation of the big cities.

Q Déan Rogers, do I understand it that there is not, in your opinion, a possibility of successful rural political organization in a state such as Colorado?

A Well, I hardly know how to answer. Most of the striking organization of Colorado which has occurred, the political organization, which has influenced the state, has centered around Denver. The corrupt Big Mint organization here fifty or sixty years ago, which influenced Federal politics, the action of the Ku Klux Klan, which made the most troublesome, the darkest period, in Colorado history, centered around Denver. I am not conscious of any movement, organized movement, of any importance, that has occurred in Colorado that was truly rural.

Q You have made mention of the fact that there is a danger in the influence by chambers of commerce. Is there a lesser danger in influence by the Cattlemen's Association of Colorado, which I think is not inactive on most occasions, or is there a lesser danger in the mining associa-

tions or is there a lesser danger in the Farmers Union, or in the Grange, or in any of the other multiple agricultural organizations that exist, if you consider it a danger?

A I think the history has shown throughout the United States that many of the more turbulent hours, many of the more turbulent events, have originated in the cities, rather than in the country. In Colorado, the cattle organizations, the water organizations, have both been rural, of course, and they both have played a part in Colorado politics, but it is not a very conspicuous part in my judgment.

Q Perhaps not conspicuous, but weighty, Dean, very weighty. In the circumstances you detail, I take it that you consider that it is a positive good then that the major segments of the population not be able to express itself legislatively, and that a braking mechanism of some kind, be kept upon it by a minor portion of the population?

A That is my own opinion.

Q Yes, and it is this purpose which is fundamentally sought to be carried out by Amendment Number 7, namely the prevention of the majority of the population controlling as a majority the legislature of the state?

A No, I should think Amendment Number 7 had quite a different, indeed almost an opposite, purpose. The purpose of the amendment, of the drafters of the amendment, in my judgment, was to recognize the growing population of the suburban counties around Denver, the metropolitan area. Denver itself was quite adequately represented and it is in here. We hear a great deal about complaints by Denver of representation, and sometimes it has been militated against, but it has grown steadily in legislation. The purpose of Amendment 7 again, as near as I can judge from the spokesmen and from the character, was to recognize the growing and legitimate demands of the suburb areas around Denver for representation and outside of that not to disturb the existing allocation of power in the state.

Q I see, so that what we are dealing with is a power allocation?

A Oh, yes.

Q Yes, and it was desired in drafting Amendment 7 not to disturb the existing allocation of power essentially, is that correct?

A Amendment Number 7 adopts the existing allocation of power, modifying it by giving new representation to the metropolitan area of Denver.

Q Yes, and so we adopt an existing allocation in which Las Animas has 19,000 people represented by a senator and Denver 61,000 represented by a senator, and Denver on this three to one basis is adequately represented, I believe you have stated, is that correct?

A Well, numerically, the distribution, the average distribution in the state, at the present time with our given number of senators is about 45,000 as I recollect it to a senator. Do I make myself clear as to what I mean?

Q You do.

A The average, therefore—Denver with a representation under Amendment 7 of 61,000 gets less than the average representation, but it is not very far from the average.

Q Yes, and then we have District 24, your own district, Chaffee, Park, Gilpin, Clear Creek, Douglas and Teller, which has one person or one senator for 20,000. That's two and a half times what it is supposed to have on your 45,000 credited, is it not?

A That's correct.

Q And Fremont and Custer get a senator, but they have only 21,000. Is that correct?

A Yes, you can go on for—

Q And Delta, Gunnison and Hinsdale get one, but they have only 21,000, and Rio Blanco and Moffat and Routt and Jackson and Grand, with 23,000. In fact, practically every one of these mountain counties has at least two and one half times and some have three and one half what population would give them, is that not correct?

A That's correct. Not all of them, but many of them.

Q Yes, and the amendment further freezes the Senate districting so that nothing will change them, no matter how much more population there is, is that correct?

A The legislature could not change them, but our people are very active in initiating them.

Q You mean they could reamend the constitution again sometime?

A As we do almost every election.

Q We have never amended this provision. From the period of the state's history down, it has just been ignored by the legislature instead, is that correct?

A That's correct.

MR. CREAMER: And that was salutary. I think no further questions, Dean, thank you.

JUDGE BREITENSTEIN: Any other cross examination?

MR. SALAZAR: We have none, Your Honor, thank you.

MR. KITCHEN: If it please the Court?

JUDGE BREITENSTEIN: Mr. Kitchen.

FURTHER CROSS EXAMINATION
BY MR. KITCHEN:

Q With regard to one or two questions, Dean Rogers, which were asked, I am not sure that the words of the present constitution were called—or the former constitu-

tion prior to the present amendment—were called to your attention. Is it not true that the former words of the constitution included the word, "ratios", plural?

A Correct.

Q Is that not a basis which might be considered as two different or one or more ratios for the House and Senate?

A Yes, I see no reason that under the constitution why it could not have been a different ratio applied to the House and the Senate, because in fact there always was a different one. Each one of the apportionment acts contains a ratio for senators and another ratio for representatives.

Q That was the interpretation placed on the constitution continuously by the legislature, is that correct?

A Correct.

Q In your opinion, is representation in the State of Colorado by the application of any strict mathematical formula practical or desirable?

A I should think it would be disastrous.

Q I should like to ask you, if you would, to explain for us, sir, some of the markings upon your exhibits. I was not able to examine these prior to the trial, and ask you if you would very briefly explain to us and to the Court what the shadings are on the map series of exhibits?

A I should have said something about that before. These exhibits are a little difficult to understand because in the number of the apportionments a single county would be included in two or three different legislative districts. For example, County X would have a senator of its own, another senator combined with County Y and another senator combined with County Z, and at least in one case there were four such allocations, which are very difficult to rep-

resent on a map. My own maps here use color and make them clearer, my working maps. The result is that the shading which occurs in these copies of the maps do as near as I can make out follow the original working maps, but they marked them in a different fashion.

Now, roughly speaking, to illustrate, to get a good example, in the apportionment of 1891, Park County is combined with Chaffee County for one post and with Lake County for another. The legislature evidently found as time went on that there was great dissatisfaction with that, because the apportionments would show they would adopt it at one period and repeal it quite promptly at the next one.

Therefore, these maps, by shading, are intended to indicate that sort of combination. Let me get a map that represents that, that combination, by a difference in shading on the maps. There is nothing on the maps intended to represent anything except the distribution of senators and representatives.

Q I see.

A Really this little factor that I am talking about is not important because it doesn't occur in modern apportionments. It is the old apportionments which have been set aside.

Q In 1913 then the legislature went to single member districts, is that correct?

A That's correct.

Q And single member districts have been maintained?

JUDGE BREITENSTEIN: Wait a minute. I don't understand. You mean since 1913 on, each district had one member?

MR. KITCHEN: No, what I mean to ask, there was no overlapping of senatorial districts after 1913.

A That's right, they didn't—there was no grouping of counties into different districts.

Q All right.

A They tried it at least twice, maybe three times, and each time they would come back and repeal it.

Q Now—

A Of course, a factor in here undoubtedly, and again I am just simply interpreting as what you would gather to be the reasons and motives of the legislature, a factor is when a county with a considerable population is grouped for purposes of representation with a little county, it practically wipes out the representation of the little county, and that has been a constant course of controversy.

Q All right: Mr. Rogers, the last change shown by your exhibits in the senatorial districts, that is the boundaries of the districts, was made in 1932, is that correct?

A I can't answer that offhand. It involves—of course, the apportionment of '53 was mainly adding to the existing representation in the same—roughly the same—districting that occurred before.

Q Yes. As I look at your exhibits, sir, the 1913 apportionment in the Senate as to district boundaries, Lake and Chaffee Counties were together?

A Correct.

Q And that was changed by the people in 1932, is that correct, sir?

A Yes.

Q Summit County was also changed?

A Correct.

Q In 1932 the people transferred Chaffee County to the district with Park and Teller and transferred Lake County to a district including Summit, Garfield and Pitkin. The legislature has not changed the boundaries of the senatorial districts as so established by the people in 1932, is that correct, sir?

A I think that is correct.

JUDGE BREITENSTEIN: Well, now, just a minute. I have been looking at this map and if I understand it correctly, Morgan County at one time was with Washington and Yuma and in 1953 it went in with Adams. In 1932, Douglas with Jefferson and 1953 with Gilpin, Clear Creek, Park and Teller. Is that what he testified?

MR. KITCHEN: I thought he testified that they had not been changed and I think there is a change that should be reflected.

THE WITNESS: You are asking me too much detail for me to answer offhand.

Q All right, the people established these districts in 1932 and those were changed by the legislature in 1953 in some details, is that correct?

A Right.

Q Now, you testified that Amendment Number 7 does take into account in your opinion population, is that correct, sir?

A Yes.

Q And you stated that that was by adding representation to the metropolitan counties surrounding Denver. Was there any change reflecting population made by Amendment Number 7?

A There is one transfer under Amendment Number 7 of one of the counties which we have referred to. I haven't got the text here before me.

Q Well, that added Elbert County—

A Shifted Elbert County from one district to another.

Q Was that not another change which affected the power distribution of population?

A Yes, they increased the number of the Senate by four.

Q And how about the House of Representatives?

A Remained the same number.

Q Same number of representatives, but it was placed on a straight population basis, was it not?

A It was. The ratio principle was removed.

Q So that under Amendment 7, the House of Representatives must reflect a straight population basis, is that correct?

A Correct.

Q Isn't it true, Mr. Rogers, that Amendment 7 has totally shifted the control of the legislature from the rural areas of the state to the urban areas of the state?

A Well, it depends upon how you define rural and urban.

JUDGE BREITENSTEIN: I was just going to suggest, Mr. Kitchen, that even if he answered that question, I wouldn't have understood his answer because you have got a lot of definitions of urban. As I recall the census, it is any place more than 2,500 people. How can you answer the question that way on the basis of the comparisons made thus far.

MR. KITCHEN: Well, that was the only way the question was asked on cross examination, Your Honor. I was just taking it up from there.

MR. CREAMER: I am sorry, the question was not asked at all on cross examination, and I specifically do object to that reference.

Q Well, how would you define the metropolitan areas of the State of Colorado, Mr. Rogers?

A Well, it would all depend on the purpose of my definition. However, speaking roughly in terms of density of population, it is obvious that the dense populations are in Denver, Boulder, Jefferson, Arapahoe, El Paso and Pueblo Counties.

JUDGE BREITENSTEIN: Mr. Kitchen, I do not mean to interrupt or cause any difficulty here, but it is my understanding that the United States Census Bureau has a method of determining metropolitan areas. If that term is going to be widely used in this record, it seems to me that some reference should be made to the census definition.

MR. KITCHEN: Well, Your Honor, there are—

JUDGE BREITENSTEIN: In other words, we have every witness giving his own ideas as to what a metropolitan area is. It seems to me we will have a lot of confusion.

MR. KITCHEN: Yes. I think that we were discussing this one time before. I believe at the hearing last summer, Your Honor, and we were at that time referring to the maps as shown on page 7-18 of the Exhibit, which I believe is Petitioner's Exhibit 1, is it not?

MR. CREAMER: I think it is, yes.

JUDGE BREITENSTEIN: Has the United States Census Bureau defined a metropolitan area here in Colorado?

MR. KITCHEN: Yes, Your Honor, at least within this context we were referring to that map which showed on that page the darkened areas of Boulder—

JUDGE BREITENSTEIN: I do not mean to influence your examination, but it seems to me since there had been reference, as I recall, to three metropolitan areas here in Colorado, if we are going to keep the record understandable we ought to have some consistent use of terms.

MR. KITCHEN: I agree, Your Honor, and apologize for the confusion.

Q I should like to refer then, if the Court please, to page 7-18 of Petitioner's Exhibit 1, which is the United States Census population of 1960, and which describes according to the Census Bureau three different metropolitan centers which are substantially as you have indicated, Mr. Rogers, is that right?

A Yes, this conforms to my answer to you as to the standard metropolitan statistical area, places of 25,000 or more. This is for the purpose of gathering a particular type of statistic in the city area.

Q All right, now, prior to the adoption of Amendment 7, did any one or any combination of these metropolitan statistical areas referred to have control of either house of the Colorado legislature in numbers?

A I have not calculated that.

Q If these areas include approximately two-thirds of the people of the State of Colorado, then would you expect that under Amendment 7 they would control approximately two-thirds of the House of Representatives, under Amendment 7?

A Yes.

Q And isn't it also true that under Amendment 7 there are allocated to these counties set forth in that exhibit a total of eight senators to Denver, eight to the surrounding counties of Boulder, Jefferson, Arapahoe and Adams, two to El Paso and two to Pueblo, for a total of twenty of the thirty-nine senators?

A: That's correct, computation—

Q And, therefore, is it not the political result of Amendment 7 that the metropolitan areas of the State of Colorado will have majority control of both houses of the legislature?

MR. CREAMER: If it please the Court, the problem of political result, I think, goes far beyond any propriety in question here.

JUDGE BREITENSTEIN: Yes.

MR. CREAMER: We have a tabulation.

JUDGE BREITENSTEIN: Yes, I am bothered with my question, Mr. Kitchen, because it is quite obvious from the statement that twenty is more than half of thirty-nine.

MR. KITCHEN: Thank you.

THE WITNESS: I was about to say that.

Q Thank you. Now, you have testified with regard to your background on water law, Mr. Rogers. Now, I would appreciate it if briefly you would relate the water problems of the State of Colorado to the legislative problems which are faced by the Colorado legislature?

A Yes, I will try to. There is, in the first place, an almost wholly different phase of water problem west of the Divide, the Continental Divide, as against the area east of the Continental Divide, speaking roughly. West of the Continental Divide, the problem of water, which is along with geography one of the two critical problems of the state—west of the Continental Divide, speaking roughly, there is a good deal of water, but very little land suitable for irrigation agriculture. The result is that the areas east of the Continental Divide have been from a very early date gradually diverting water from the west side of the Divide to the eastern side.

There are a large number of small diversion ditches dating back to 1870 and '80, which carry water from the west side to the east side, supplementing the flow of water on the east side. The result is that the western part of the state has a conflict of interest with the eastern part of the state, which is represented by the present distribution.

For example, of the four representatives in Congress, the Western District has a population only of a half or a third of the two districts—of the three districts east of the Continental Divide, and the reason is that it is clear that it has survived for a long time that in spite of the fact that the representative from the western slope speaks for a much smaller number of people. I have never heard a protest against the existence of that situation. The people recognize there is a conflict that ought to be treated as an element in our lives.

Now, east of the Continental Divide there has always been a water shortage. We have very heavy irrigation in the valleys of the Platte and the Arkansas, irrigation which produces crops which are completely different from the crops in the dry land areas, and different from the characteristic crops on the western slope.

Speaking broadly, or roughly, there is no general farming on the western slope at all, very little of it. There is considerable fruit growing on the north fork of the Gunnison and on the Colorado River, but general farming of the type that we have recognized as such in the Arkansas Valley and in the Platte Valley is almost unknown. The people's lives are very different.

On the eastern slope we have a problem of providing for representation, for spokespersonship between two very different kinds of agriculture, and including in agriculture cattle raising. Deep in the Arkansas Valley and close to the river and in the Platte Valley, we have a rich productive farming, supported by constant fertilization in which

the critical element all the time is the flow of ditches, which have produced wealthy communities that are very stable. It is markedly true in the Platte Valley and it is only a little less true in the Arkansas Valley.

Now, the interests of those people and their character is very different from the inhabitants of the prairie country in eastern Colorado, or of the cattle country in north-western Colorado. There is a great deal of change of population in those areas. I have been interesting myself for two or three years by indexing the towns, the streams, the villages of Colorado, through their history. One of the most striking things is that the turnover in population on the prairies in the east is greater than the turnover in population in the mining areas. The towns rise and vanish in the dry land areas. Their interest is—their only interest in water is a place where you can water cattle in the prairie areas. They have none of the preoccupation with problems of water, of water distribution, and of the defense of Colorado water against the lower states which claim our streams. Means nothing to them. They go through cycles of great production in wheat and fodder crops and then it disappears and the towns vanish.

The consequence is, and this is what I think you were asking me to say something about—the consequence is that the representation of the river valleys in the east is very different from the representation, the proper representation, of the prairie areas in the east, and the representation of the western slope is very different in its problems from the representation of the eastern slope.

Now, there is one other area which has a special situation. Namely, the valley of the Rio Grande, which we usually refer to as the San Luis Valley. They have another series of problems. It is a country primarily irrigated by wells, but the demands of New Mexico and of Old Mexico on the Rio Grande, while they were not adequately recognized under the terms of the law, use up a great deal of the

water flow of the Rio Grande, and that part of the country is well country.

The consequence is, and I think this is what you were asking me to discuss a minute ago—the consequence is that we have on this great fundamental resource of water a division of the state, which I could even elaborate beyond what I have done.

Q. Is that division of water interest reflected by the boundaries of the district as set forth in the 1953 apportionment and in Amendment 7?

A. Yes, there is—you can see a very definite effort in that direction.

Q. Now, with regard—I am going to ask you if, sir, you recall the legislature of 1937 and the passage of the water conservancy district act?

A. Yes.

Q. And what sort of legislative problem was the Colorado legislature concerned with that would relate to this conflict of interest that you are talking about?

MR. CREAMER: If it please the Court, I do not believe that the witness can properly be qualified to go into the background of the water conservancy act of 1937. The act if it is pertinent is an act which is capable of being examined at length. It is one with which the Court is not unfamiliar, and, moreover, it is a problem which as to examination by the witness simply is not helpful at all. It is a protraction that is infinite. I think any act that affects the economic wellbeing of anybody in the State of Colorado could be equally used as a basis for examination of a witness here, and, frankly, I would submit to the Court that's quite beyond the scope of the inquiry.

JUDGE BREITENSTEIN: Well, we are going to overrule the objection, but perhaps, Mr. Kitchen, you are

not going to pursue that too long, that line, because there is considerable weight in what Mr. Creamer says. Well, let the witness answer.

MR. KITCHEN: This is an example, Your Honor.

JUDGE BREITENSTEIN: Go ahead.

Q What was the tool whereby the Frying Pan-Arkansas project—

JUDGE BREITENSTEIN: Let's don't get into individual projects. Now, if you want to bring up the economic impact and questions involved in the set up of the Colorado Water Conservancy Board—but I think that's as far as you need to pursue that subject.

MR. KITCHEN: All right.

Q Could you, Mr. Rogers, point to the particular provisions of this act which had to do with this conflict of interest and area interest in water that you mentioned?

A We have had a long series of legislation of which the water conservancy act is one of the late examples, of efforts to organize the diversion of water from the western slope to the eastern slope, and also included within that general project to organize these river valleys within themselves to get greater efficiency. Those are things that are of great interest to the river valleys. They have some interest to metropolitan Denver because there is so much financing done here, but they have almost no interest to the prairie country in the east or to the counties on the western side of the Divide.

Q One further question, you mentioned in your testimony that the last change in counties was made in, I believe you said, 1913, sir, is that correct?

A That's right.

JUDGE ARRAJ: He answered the question.

MR. KITCHEN: I am sorry, I didn't hear it.

THE WITNESS: Yes, I answered.

Q Yes, I am sorry. With regard to counties as such, what has been the structure of the government of Colorado, and by that I mean, has the—have the people left the structure of counties to the legislature in this state?

JUDGE BREITENSTEIN: That's a matter of law. We can read the law, Mr. Kitchen.

MR. KITCHEN: All right.

Q Speaking from a standpoint of the history which you have testified to, can you give the background and reasons for the law and the structure of the constitution with regard to counties?

JUDGE BREITENSTEIN: Well, now, please let's don't go to far afield on this, Mr. Kitchen. If we are going into the background of each one of these counties, we can be trying this case from now until Christmastime. How is that pertinent?

MR. KITCHEN: Well, because the structure of the amendment we are talking about has to do with counties, Your Honor.

JUDGE BREITENSTEIN: All right, but I am kind of reluctant to let you go into the background of each county and its boundary, but if you want to, go ahead.

MR. KITCHEN: I am not talking about each county, but the county system of Government in general.

A Well, historically—perhaps I can finish this up in a word or two—historically, counties have been created by the legislature whenever a community built up which had enough population and feeling of unity to ask for a county. Our counties have developed rapidly. For example, on the eastern plains during the periods of a cycle of heavy rainfall. They developed in the mining section when miners began to make discoveries, and these counties

have been created by the legislature, not always, but almost always when there was a demand sufficiently strong.

Now, it wasn't easy to do it because they had to take away from other counties to do it, but roughly speaking that has been the history of the development of the counties.

MR. KITCHEN: Thank you, Mr. Rogers.

JUDGE BREITENSTEIN: Is there any further examination of this witness?

MR. ZARLENGO: We had a little redirect.

JUDGE BREITENSTEIN: We will take the noon recess at this time.

The Court will be in recess until 1:30.

(The Court recessed at 12:00 o'clock p.m., and reconvened at 1:30 o'clock p.m.)

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

ARCHIE L. LISCO, et al,
Petitioners,

v.

STEPHEN L. R. McNICHOLS,
etc., et al,
Respondents.

and

WILLIAM E. MYRICK, et al,
Plaintiffs
and
Petitioners,

v.

THE FORTY-THIRD GENERAL
ASSEMBLY OF THE STATE OF
COLORADO, et al,

Respondents
and
Defendants.,

FEDERAL PLAN FOR APPOR-
TIONMENT, INC., et al,
Intervenors.

CONSOLIDATED

Civil Action No. 7501

Civil Action No. 7637

OFFICIAL TRANSCRIPT

VOLUME II

Afternoon Session,
May 6, 1963

Proceedings had before the HONORABLE JEAN S. BREITENSTEIN, HONORABLE ALFRED A. ARRAJ, and HONORABLE WILLIAM E. DOYLE, in Courtroom A, Main Post Office Building, Denver, Colorado, beginning at 9:30 o'clock a.m., on 6th day of May, 1963, as continued at 1:30 o'clock p.m., on the 6th day of May, 1963.

APPEARANCES:

As heretofore noted.

INDEX

DEFENDANTS WITNESSES:

JAMES GRAFTON ROGERS (Continued)

Redirect Examination 67

Cross Examination

By Mr. Creamer 69

By Mr. Harthun 76

JOHN G. WELLES

Direct Examination 80

DEAN C. CODDINGTON

Direct Examination 84

Cross Examination

By Mr. Ginsberg 96

By Mr. Creamer 106

By Mr. Kitchen 114

JOHN P. LAWSON

Direct Examination 116

Cross Examination

By Mr. Creamer 125

By Mr. Harthun 145

By Mr. Kitchen 146

INTERVENORS' WITNESSES:

JOSEPH F. LITTLE

Direct Examination 152

PROCEEDINGS

(The Court reconvened at 1:35 o'clock p.m.)

MR. HARTHUN: May it please the Court, before we commence the proceedings, I would like to state on behalf of Mr. Salazar, Mr. Salazar apologizes for being unavoidably detained this afternoon.

With the Court's permission, Carl Harthun, with the permission of Salazar and Delaney, will carry on this afternoon.

JUDGE BREITENSTEIN: Yes.

JAMES GRAFTON ROGERS

resumed the stand and further testified as follows:

REDIRECT EXAMINATION

BY MR. ZARLENGO:

Q Dear Rogers, you testified this morning concerning various interests in the state, mining interests, water problems and agriculture and livestock and so forth. Will you state whether or not these various interests are important to the economic life of a state as a whole.

A Oh, undoubtedly. While Colorado is so varied geographically and economically, it is not greatly varied socially, but it is economically and geographically. The strength of the state is derived from all these interests combined and it is easy to over-picture the divergence.

The divergence is real, but it is kept under order by the very kind of machinery that is under discussion here, and these varied interests of Colorado—even Denver has heavy stakes in the prosperity and success and progress of agriculture, in its various phases of minerals, resources, water, the tourist industry, the great variety of interests, and a large part of the prosperity of the state is due to the balance of those, the fact that no one is dependent on any one of them.

Q Have these various areas and these various economic interests been represented in the legislature and the House through various apportionments and the ratio system and so forth?

A We have had some violent conflicts in the state history, particularly over coal and mineral mining, but outside of those and of the crazy performance of the Ku Klux Klan, the state has gone along amicably and smoothly, I think, over most of the states in the union.

Q Dean Rogers, is there any relationship between these areas and these economic interests and the ratio system that was in existence prior to Amendment 7 as far as representation in the House and Senate is concerned?

A Oh, yes, I think it is clear that the ratio system and the whole theory of something else than a mere capita representation are intended to protect the minority interests and the scattered interests as against any one overwhelming interest as represented by the metropolitan area.

Q And how about these economic interests?

A Yes: You mean—well, for example, I can't imagine the people of Denver in control of the legislature ever even understanding the farmer's problem on the South Platte or the Arkansas Valley area. It wouldn't be that they would be hostile. It would be simply incomprehensible to the people of Denver as to what their problems were, and, therefore, their representation is not only important to the preservation of those minority interests, those scattered interests, but also involves the whole welfare of the whole state.

MR. ZARLENGO: I believe that's all we have, Your Honor.

JUDGE BREITENSTEIN: Any further questions of Mr. Rogers?

MR. CREAMER: One or two, if it please the Court.

50

CROSS-EXAMINATION

BY MR. CREAMER:

Q Dean Rogers, Section 46 of Amendment 7 provides that the state shall be divided into 65 representative districts which shall be as nearly equal in population as may be. Do you recall that provision?

A Yes.

Q And I believe when Mr. Kitchen examined you, one of his first questions was what the effect of straight population representation would be, and you stated that strict representation would be utterly disastrous. Now, do you consider that the provision in Section 46 for division into 65 representative districts which shall be as nearly equal in population as may be is utterly disastrous?

A No, because there is a check point. We have a bicameral system. The purpose of a bicameral system is to provide a check on one side against another. It is the only purpose that a bicameral system can have and a difference between the backgrounds of the two bodies is of very great value to a Commonwealth.

Q Yes, and then you point out that the metropolitan areas also have a majority of the membership in this checking Senate, so we have an utterly disastrous House and a majority in the Senate. If this is the case, how have you or how has Amendment 7 achieved that degree of balance among economic factors that is desirable?

A Well, I don't assume that either the metropolitan area or the rural areas will vote or act or even think in complete unanimity, and they are not hostile bodies.

Q They are not hostile bodies, are they?

A No.

Q And the areas are not hostile areas, are they?

A No.

Q And, as a matter of fact, all that you are basically saying is that Colorado is a rather large and complex state, in which there are quite a number of ways in which people earn their livings and each of these economic areas or ways in which they earn their livings have some problems, isn't that correct?

A No, that isn't all.

Q Well, that is essentially it.

A They not only have problems, but they need the means to present their problems and to have them brought to the attention of other people who haven't the same problems.

Q Dean Rogers, isn't it perfectly true that as long as there is representation from these areas in the several houses, the matter can be brought to the attention of the houses without a three-to-one preponderance of influence in the houses.

A Oh, yes, of course.

Q There is no problem of Las Animas County presenting a problem it may have without having a three and one-half to one advantage over another county in its presentation, is there?

A If Las Animas County was—just using that as an example for the moment—was wrapped up in a bundle with a lot of other counties which had no interest in the problems of Las Animas County, or to get it more marked, if Weld County, for example, which is almost purely agricultural in this irrigation sense, if Weld County was wrapped up with a series of communities, none of which had a farm in them, they wouldn't get a voice. They would be lost.

Q But we don't happen to have that problem, do we?

A No, we avoided it.

Q You have the tier of western counties, west of the Divide, almost being homogenous in their problems, don't we, and those are the heavily over-represented counties, but they still have voice; even if you reduced them to their proper population representation, would they not?

A No, on the whole, the heavily represented counties are the mountain counties, not the far western.

Q Yes, and these would still have a voice, even if they had only the same voice per capita as others, could they not?

A If you get an overwhelming majority representing any one point of view, the difficulty with the problem isn't a voting problem. It is a problem of the fact that they have neither knowledge nor patience to handle the problems of someone else who is outside of their zone of experience.

Q Do you seriously contend, Dean, that there is no knowledge in Denver capable of handling a mining problem and agricultural problem or a water problem?

A Well, not none. I suppose there are men drawn from Denver into the legislature and the Senate and the House who have some knowledge of mining problems, some knowledge of irrigation problems, some knowledge certainly of the recreation activities of the state, which are quite important.

Q As a matter of fact, Dean, Denver, not only with relation to Colorado, but for an area of seven states, has been for many years the major commercial goods distribution and financing and administrative operational center for that area, has it not?

A That's right.

Q Our banks finance the mines, don't they?

A Or somebody else's banks.

Q And our banks largely finance the cattle and wheat and sugar beets and all the rest, do they not?

A No, I wouldn't think that Denver financed the mining nor that it financed the agricultural interests of the state. I do think it finances a good deal of—parts of the—of the cattle industry, for example.

Q And the goods come largely to market in Denver, don't they?

A Yes.

Q And they are largely processed in Denver?

A Almost everything comes in.

Q And largely distributed in Denver, aren't they?

A The people of Colorado buy what they need primarily in Denver and they sell primarily to Denver.

Q And, as a matter of fact, given our present system of communications, there are very few parts of the state of Colorado that are very much more than three hours' driving time from the City and County of Denver, is that not true?

A No, you under-estimate that. During very favorable circumstances, you can reach Durango or Cortez in a long day's drive. In the winter, it is a much more difficult thing, and you have to got to pick the day and the weather to get into Denver within a day from Durango and Cortez in the winter.

Q You can get there in about 22 seconds by picking up a telephone, if the operator is not functioning well, and 5 if she is, is that correct?

A Oh, yes, you can get there by air, too, through part of the state. That is, the small population center, but that isn't the way we do. What we do is drive.

Q As a matter of fact, if you were put to it strictly, is there any way you could possibly relate what you mentioned as economic representation in the Senate as the Senate is constituted by Amendment No. 7 to any kind of formula which anyone could apply on other than a purely arbitrary basis?

A The distribution of the Senate under Amendment No. 7 appears to me to be the product of a complex of historical, economic, social, and not many political, elements, but it is a complex of them all. Certainly, it does not represent a distribution of the Senate on the basis of an International Business Machine product.

Q We don't have anybody we could call a Senator for sugar beets, do we, in the State of Colorado?

A Oh, yes, I would think that there are in both the Senate and House today a number of men whose primary interest is in the type of agriculture, and sugar beets is a very important part of it.

Q You believe that we have senators elected to represent sugar beets then?

A In a sense.

Q Now, do we have senators representative of wheat?

A Well, I can't think of anybody. We have certainly senators representative of cattle. We have senators representative of recreation interests, of the tourist business. That is, men who come from communities whose bread and butter is primarily bound up in those.

Q How do we determine whether the economic welfare of the state requires that we have two sugar beets to six wheats or one recreation to three silver or one gold to a lead or how do we establish the equation in that manner?

A I know no equation except experience, Mr. Crea-

mer. It is the product of—Amendment No. 7 is a product of a hundred years' experience in the state.

Q You mean, the mess we had in 1953 is so gorgeous a product of balanced experience which you have already stated was not even constitutionally predicated on this matter, that by adding four to that experience and freezing it in perpetuity, life is assured happily?

JUDGE BREITENSTEIN: Mr. Creamer, that's a pretty argumentative question.

MR. CREAMER: I think it is totally so, Your Honor, I will withdraw it.

JUDGE BREITENSTEIN: We will give you plenty of opportunity to argue this case later on.

MR. CREAMER: I deem there are no more questions we need ask at this point. Thank you.

JUDGE BREITENSTEIN: Any other questions of Mr. Rogers?

MR. HARTHUN: If it please the Court, I would like to ask a couple of brief questions.

JUDGE BREITENSTEIN: Very well.

FURTHER CROSS-EXAMINATION

BY MR. HARTHUN:

Q Mr. Rogers, calling your attention to the present existing constitution of the State of Colorado, Section 45 thereof, wherein it is recited that the census figures should be utilized for the revision and apportionment of Colorado, and that on the basis of such enumeration according to ratio to be fixed by law. Now, you have stated that it is your opinion that the ratio encompasses social, political, economic and so forth interests throughout the state, is that correct?

A No, the ratios are entirely a mathematical problem and associated basically simply with the question of tempering the pure population tests for apportionment. There is no way for a ratio, except very indirectly, to represent an economic interest or social interest or a geographic problem that I know of.

Q Do you have any other basis, statutorily or constitutionally speaking, for a divergence from the strict population ratio outside of this historical basis you have recited today?

A I was asked that before. As I testified, and I am not testifying—I am testifying from what apparently is the experience of the state and its history and what seems to have influenced its people. It seems to me the purpose of the population standard in the constitution, of the per capita rule, is to put a check on a legislature which has very wide discretion as to what it does in every particular, except as limited by the constitution.

In other words, while it doesn't say to the legislature, "Consider the social, the economic, the fiscal problems," it is assumed that that's what the legislature is there for, and the constitution simply says, "You have got a limitation on what you can do, which is that you must consider the distribution by population within the limits that we are prescribing."

Q In other words, it is merely more of an assumption than a mandate, isn't that right?

All right.

Q And the words of Section 45 as they existed in the previous constitution, which preceded the language concerning ratios, dealing with enumeration and apportionment for senators and representatives on the basis of such enumeration, that is qualified in your opinion by the

historical concepts as to social, political and economic interests, is that correct?

A It is qualified by the very nature of the legislature and the kind of topics the legislature deals with.

JUDGE BREITENSTEIN: Mr. Harthun, hasn't most of this material been gone over at least twice, once on direct and once on Mr. Creamer's cross?

MR. HARTHUN: What I am trying to illustrate, Your Honor, is the fact that the witness has no other legal basis.

JUDGE BREITENSTEIN: All right, we will go ahead. I just don't want you to walk down the same path that the others have gone around.

MR. HARTHUN: Well, I would finish with that area anyway. One other brief question.

Q You did state in 1850, many of the states, approximately or around the area of 1850, many of the states varied from the population, strictly population basis, and that this was done by law. Now, the fact that the constitution of the State of Colorado as presently cited here, this specific provision, 45, did not set forth any variation from the population as recited therein, would not that lead you to believe possibly that Colorado was refusing, rather than adopting, the trend that was supposedly being taken by other states throughout the country?

A No, I consider that it's—not I, but any student of government would consider that the Colorado constitution of 1876 does put a check on the pure population formula for representation by adopting the ratio provision.

Q And that is the only check?

A That's the limitation on it.

MR. HARTHUN: Thank you very much.

JUDGE BREITENSTEIN: Any further questions?

MR. ZARLENGO: No questions.

MR. CREAMER: No. Sir.

JUDGE BREITENSTEIN: That's all, Mr. Rogers.

THE WITNESS: May I be excused?

JUDGE BREITENSTEIN: Is there any objection to Mr. Rogers being excused?

MR. HARTHUN: No objection.

MR. ZARLENGO: No objection.

JUDGE BREITENSTEIN: Call your next witness.

MR. ZARLENGO: John Welles.

JUDGE BREITENSTEIN: Please stand and take the oath.

JOHN G. WELLES

called as a witness by the defendants, having been first duly sworn, on his oath testified as follows:

DIRECT EXAMINATION

BY MR. ZARLENGO:

Q State your name, please.

A John G. Welles.

Q Your address?

A 3062 South Gilpin Street, Englewood, Colorado.

Q What is your present occupation?

A I am head of the Industrial Economic Division, Denver Research Institute, University of Denver.

Q How long have you been engaged in that occupation?

A Since 1956, approximately six and a half years.

Q Will you state what is the nature of the Denver Research Institute?

A The Denver Research Institute was founded in 1947 as a department of the University of Denver to perform contract research for industry, government, individuals, both locally and nationwide. It now has about four hundred twenty employees, all of whom but sixty approximately are full-time research people. The Institute performs contract research in seven major areas. Six of them are scientific, such as metallurgy, physics, chemistry. The seventh area is the industrial economic area, which I head up.

Q You are the head of that division, are you?

A That's right, sir.

Q And you have been the head of that division how long?

A Since 1956.

Q What is the function of the division that you have?

A If I may go back just a minute, to describe a little bit of the kind of research that the Institute as a whole does, about a little over half of our dollar volume, which amounts to about \$5½ million a year, is done for the Department of Defense, Atomic Energy Commission, the National Aeronautics and Space Administration, various national firms such as General Electric, Martin Marietta, Westinghouse Electric, and so on. The division which I head up performs applied economic research for similar types of clients, including the National Aeronautics and Space Administration, Small Business Administration, Office of Civil Defense, The State of Colorado, City and County of Denver, Public Service Company of Colorado, Robinson Brick and Tile, to mention a few.

We work in the areas of reasonable economic analysis, which means economic forecasts through various economic areas or political, geographical sub-divisions and economic development programs. We also do plant research, plant location studies, feasibility analysis of proposed capital expenditures, and a certain amount of work in the economics of research and development.

Mr. Welles, would you tell the Court about your educational background and your experience?

A I have a Bachelor—

MR. CREAMER: Mr. Zarlengo, if I may interrupt, and I don't mean to, because it would be unquestionably an array, I will concede that, but we do have a time limitation and I don't think there is any disposition to question that Doctor Wellés is a perfectly qualified statistician. I really don't think that we have the expert problem we have in most cases anyway, so I would be disposed to concede his technical qualifications most certainly exist.

JUDGE BREITENSTEIN: All right, do you want them in the record, Mr. Zarlengo? Are you satisfied with that?

MR. Zarlengo. I wanted to get some of them in the record.

JUDGE BREITENSTEIN: With counsel's concession, you don't need to be quite as thorough as you would otherwise. We recognize the doctor's qualifications.

MR. ZARLESNGO: Very well, then since those are recognized, I think all the way around I won't take up further time on them.

JUDGE BREITENSTEIN: All right.

Q Mr. Welles, you told us that you are the head of this particular division. Did your division have occasion

to prepare a report for the State of Colorado in connection with Amendment No. 7?

A Yes, sir, we did.

Q And were you in charge of that report?

A I had over-all administrative supervision of the report. Dean Coddington was the actual project supervisor. He is on my staff.

Q And what function did you perform in connection with this report?

A I helped to formulate the research program. I consulted with the people doing the research work from time to time during the course of the project and I reviewed drafts of the final report.

Q I hand you Defendant's D and tell the Court what that is, please.

A This is the report which we performed for the Attorney General's office, State of Colorado, entitled, "Economic Analysis of State Senatorial Districts in Colorado."

Q I see inside the report is an errata sheet. Was that prepared under your supervision also?

A Yes, sir, it was dated May 2, 1963.

Q And Dean Coddington naturally supervised the work contained in the report?

A That's correct, sir, and performed a major part of it himself.

Q And you had general supervisory jurisdiction over it and reviewed the report after it was prepared?

A That is correct, sir.

MR. ZARLENGO: That's all we have of this witness, Your Honor.

JUDGE BREITENSTEIN: Any questions of Dr. Welles?

MR. HARTHUN: I have none.

JUDGE BREITENSTEIN: Mr. Creamer, do you have any?

MR. CREAMER: No.

JUDGE BREITENSTEIN: Mr. Kitchen?

MR. KITCHEN: No questions, Your Honor.

JUDGE BREITENSTEIN: That's all, Dr. Welles.

MR. ZARLENGO: Thank you, we will call Dean C. Coddington.

DEAN C. CODDINGTON

called as a witness by the defendants, being first duly sworn, on his oath testified as follows:

DIRECT EXAMINATION

BY MR. ZARLENGO:

Q Will you state your name, please.

A Dean C. Coddington.

Q And your address?

A 6612 South Ogden Street, Littleton, Colorado.

Q Your present occupation?

A Research economist, Denver Research Institute, University of Denver.

Q How long have you been so engaged?

A Approximately 4 years.

Q Will you tell us something about your prior experience?

A Prior to joining the Denver Research Institute, I was in graduate school at the Harvard Graduate School of Business Administration for two years. Prior to that period, I served as an installation engineering officer in the United States Air Force. Prior to that time, I was in undergraduate school, engineering school, and held a number of summer jobs.

Q Would you tell the Court about your educational background, please?

A I have my Bachelor of Science degree in engineering from South Dakota State College, my masters degree in business administration from Harvard.

Q And you have been with the Denver Research Institute I believe you say, four years?

A Yes, sir.

Q What duties do you perform for the Institute?

A In some cases—

MR. CREAMER: Mr. Zarlengo, if it will in any way assist, I am acquainted with Mr. Coddington's work in many respects. He is a perfectly qualified research economist. We would concede that is the case, and he performs those functions.

JUDGE BREITENSTEIN: That is true, Mr. Zarlengo, unless you have some particular reasons for going into the witness' qualifications.

MR. ZARLENGO: No, I haven't, Your Honor. If there is no objection, I will get down to the report.

Q Dean Coddington, I will ask you to state whether or not Exhibit D was prepared under your supervision?

A Yes sir, it was.

Q Will you tell the Court what you did in connection with the report, how it was prepared, and so forth?

A ' Very briefly, the approach we used in preparing this report was to first gather together all of what we considered to be pertinent economic, socio-economic and geographic statistics by county for the State of Colorado. These statistics were gathered primarily from what we might term standard sources, such as U. S. Bureau of Census reports, state planning reports, et cetera. After we had gathered together the statistics we then proceeded with an analysis again, which is contained in Part 1 of the report.

Q The report is divided into how many sections, Dean?

A The report is divided into two parts. Part 2 contains most of the statistical and graphic information Part 1 contains the analysis.

Q Now, in preparing that report, did you divide the state into more than one section?

A It became quite evident early in the study that—that is, after the basic statistics had been gathered and assembled—that there were four distinct geographic areas in Colorado. These four areas are what we call the western region, the eastern region, the east slope region, and the south central region. Would it be helpful if the people in the court had copies of the report so I can refer to specific charts?

MR. ZARLENGO: I believe we will. Your Honor, at this time we are going to offer Defendant's Exhibit D.

JUDGE BREITENSTEIN: Any objection?

MR. CREAMER: The exhibit is an extremely lengthy one, which none of us have seen until this morning. Upon principle, as I personally stated when we began this some months ago, I don't propose to object to anything in the nature of a statistical study that may be considered by the Court to be useful, but it appears to be some 2 or 300 pages

and it will be absolutely impossible to make an intelligent objection or intelligent exception. We would like to be able to examine into the matter. We have no objection to it as being introduced as an illustrative exhibit, as I trust most of the exhibits have been introduced are. As to the accuracy of the matters set forth, I simply don't know and have no way of judging.

JUDGE BREITENSTEIN: Well, of course, this is a trial to the Court, Mr. Creamer. I believe the members of the court can sift out the evidence. Any other objections?

Exhibit D will be received in evidence.

(Defendant's Exhibit D for identification was received in evidence.)

MR. ZARLENGO: Does each counsel have a copy of the report?

MR. CREAMER: Yes.

MR. HARTHUN: Yes.

Q Dean Coddington, each of the members of the court and each of the attorneys have a copy of the report, Exhibit D. Will you now go ahead and explain the four sections under which the state was divided?

A If the Court will please turn to page 2 of Part 1, second or third page, behind the blue divider, here is a map that shows the four economic regions. I mentioned that each of these regions was considerably different from other regions in the state. If I might very briefly—

Q Yes, tell us why you divided the state into four regions.

A Well, first of all, it becomes apparent when we look at the western region that you have an area that has

mountainous terrain, where accessibility between cities and counties in many cases poses problems. From a viewpoint of the economist, you have an area very rich in natural resources, water forces, minerals, scenic beauty and this thing. You have an area where agriculture and mining are the dominant basic sources of employment.

You have an area where the various levels of government own approximately two-thirds of the land.

In the eastern region, what might be called the plains region, you have obviously flat and rolling terrain. Dry farming is the major land use with over a third of the land being used for this activity. All but two of the counties in the eastern region lost population between 1950 and 1960 census. Agriculture is the dominant source of employment in the region and in every individual county in the region.

The south central region is differentiated by other factors. We have a Spanish or Mexican influence in the area. According to the census report, 39% of the population in that area has Spanish surnames. You had large losses of population in this area between 1940 and 1960, down 32%. This is what might be termed an economically depressed area, with low income levels, high unemployment rates, lower educational levels, this sort of thing. The basic sources of income and employment in this area are agriculture, most important, and then mining.

And, finally, we have what we have called the east slope region of Colorado. The major distinguishing characteristics of this area is rapid population growth. It is dense population. It is highly urbanized population. Manufacturing, trade and services are the major sources of employment in this area. Family incomes are relatively high and educational levels are high, but, briefly, these are the characteristics of the four regions that we have used in this study.

MR. CREAMER: May I make one inquiry at this point, which is sort of voir dire, I guess, and which may clarify one thing to me and perhaps to the Court? There are four regions shown on the map, but there are two counties stuck down in the southeast corner that don't seem to be in a region.

JUDGE BREITENSTEIN: I was concerned about same thing. Would you clarify that?

MR. ZARLENGO: Is that Prowers and Baca?

THE WITNESS: That is covered on our errata sheet. That is an error.

JUDGE BREITENSTEIN: I see.

MR. CREAMER: I hoped they weren't just floating territories.

JUDGE BREITENSTEIN: I was kind of worried about Prowers and Baca counties myself. One is Judge Arraj's county.

Q You have prepared, have you not, an errata sheet that has been prepared to the report?

A Yes, sir.

Q That covers that situation then, and some other errors that were in the report?

A Yes, sir.

Q All right, you have explained to us that the state was divided into four different regions. Have you told us why was that done?

A There were several reasons why this was done for the purposes of this study. First of all, it was quite confusing to us early in the study to have a mass of statistical data on different counties in Colorado. We had to have some framework by which we could relate the relative importance of certain of these statistical data. Otherwise,

our discussion which will follow of each senatorial district would have been even more lengthy than it is now. So, it was a matter of convenience for us in doing the analysis. It helped us in defining what was important, what was not important, in each of the regions.

In addition, we felt that it made a smoother—it made for a smoother presentation of the analysis of individual sub-areas within the region which followed.

Q Well, other than the matter of your convenience, does the state fall into these four different types of areas?

A In our opinion, it certainly does.

Q And are these distinguishing characteristics between these different areas?

A Yes, I have just tried to relate some of these distinguishing characteristics.

Q And those are also pointed out in your report, are they not?

A Yes.

Q Now, then, in addition to that did you go into the distinguishing characteristics between the senatorial districts in the area, in the four areas?

A Yes, we did.

Q Will you tell the Court what you mean by a distinguishing characteristic?

A Our definition of a distinguishing characteristic is something which we would place importance on in an economic analysis of an area. For example, in Las Animas County, the distinguishing characteristics of that area are those of a depressed area, losing population, with its economy based on coal mines and agriculture. Could I illustrate what I mean by distinguishing characteristics by pointing to some other examples? Would that be helpful?

MR. ZARLENGO: With the permission of the Court, we would like to have him do that.

JUDGE BREITENSTEIN: Go ahead.

A (Continued) Talking about District No. 13, in northwestern Colorado, which includes Moffat, Routt, Rio Blanco, Jackson and Grand Counties, from our viewpoint this particular sub-area is distinguished by mountain ranges and accessibility. In other words, the area is well defined by these problems of accessibility and by mountain ranges.

Another distinguishing characteristic of this area is that its economy is resource-oriented. That is, minerals, agriculture, lumber, tourism are all important to the economy of the area.

If I could talk about another district in eastern Colorado, District No. 18, which includes Elbert, Lincoln, Kit Carson, Cheyenne and Kiowa Counties, in our opinion this area is distinguished by its basic source of income and employment, which is agriculture. Over 38% of the work force in that area earns its living in agriculture. The populations of the area have declined. It is 100% rural. That is, there are no towns or cities in the area with 2500 or more population.

To take another district in what we have called the east slope region, District No. 2, which is Pueblo County, Pueblo County from the viewpoint of an economist is distinguished by its steel-based economy. Over 32% of the employment in Pueblo County is in manufacturing and most of that is in the production of steel.

These are some examples of distinguishing characteristics of different sub-areas within Colorado.

Q How about District No. 12?

A District—

Q Logan and Sedgwick, Phillips.

A District 12 is somewhat similar to District 18 in eastern Colorado. That is, that agriculture is the dominant source of employment for the whole district, and it is the most important source of employment for each individual county in the area. This is a primary factor.

Q Now, in your Exhibit D, did you point out all these distinguishing characteristics as to each senatorial district?

A Yes, near the end of our discussion of each district we tried to summarize the distinguishing characteristics.

Q In El Paso County, did you ascertain whether or not a large portion of the population is either in military installations or working for the government?

A Yes, the economy of El Paso County is distinguished by the fact that is largely dependent on military payrolls and it is also dependent on tourism as a major source of basic income.

Q That matter is also pointed out in your report, is it not?

A That is correct.

MR. ZARLENGO: Your Honor, since practically all of this is in the report and I don't want to repeat the whole thing twice, maybe we will just submit the report and everything for cross examination at this time.

JUDGE BREITENSTEIN: Mr. Creamer, have you had an opportunity to see this before?

MR. GINSBERG: I am going to cross-examine.

JUDGE BREITENSTEIN: Oh, Mr. Ginsberg.

MR. GINSBERG: I haven't seen the report, but I don't think it is necessary to for the facts I want to go into.

JUDGE BREITENSTEIN: Oh, now, you understand Mr. Zarlengo's testimony, the other testimony he would adduce from the witness, is all covered in the report. Since it is here, he sees no reason to amplify it by oral statement.

MR. CREAMER: I think that's true. It is the same problem we have on most of the statistics.

JUDGE BREITENSTEIN: You are ready then to go ahead and cross-examine?

MR. GINSBERG: My examination will be pointed to another direction.

JUDGE BREITENSTEIN: All right, we have received Exhibit D in evidence, is that right?

THE CLERK: Yes, it is.

JUDGE BREITENSTEIN: Go ahead.

CROSS-EXAMINATION

BY MR. GINSBERG:

Q When were you employed to make this report and investigation?

A December of 1962, I believe.

Q And by whom?

A The Colorado Attorney General's office.

Q And what was their objective in having you make it?

A Well, the objectives of making the study, I think, are stated in the introduction to the study.

Q I haven't read the report, so briefly answer my question.

A The purpose of the study was to make an economic analysis of the state senatorial districts as defined under

Amendment No. 7, with two purposes in mind. First, to identify the distinguishing characteristics from an economic, socio-economic and geographic viewpoint, and, secondly, to look at the similarities and dissimilarities of individual counties comprising multiple counties senatorial districts. That was the purpose of the study.

Q The objective then was to justify the selection of senators on a basis other than population?

A That wasn't their objective. It may have been the Attorney-General's office.

Q What other objectives could they have had?

A I don't know what their objectives were. I have a hunch.

MR. ZARLENGO: If the Court please, I see no materiality to this, what the Attorney General's objectives were. The question was whether this witness made an objective study.

JUDGE BREITENSTEIN: Yes, what the Attorney General—

Q What was your objective? What did you want to establish by the report?

A We wanted to establish what the characteristics were, if any, for each senatorial district in Colorado, and show what the differences were, if there were any differences. We were looking at three factors.

Q With what objective in mind? Why were you seeking this conclusion?

A It is necessary we have to have a conclusion in order to do an economic analysis?

Q Usually there is an objective to any analysis, economic or otherwise. You must have had some objective in concocting this report.

A There are two types of economic studies that we do primarily. This falls in one category. The first is to evaluate an area for the purposes of a bank or some other type of facility that somebody might want to construct in the area. In other words, look at the economic base in view of specific projects, which may take place in the area.

The second type of economic study that we do is simply to identify the major economic forces at work in an area without any particular purpose in mind for this information to be used for.

Q You have then no particular objective in mind at all in the use of your report here?

A Well, we know what the—what part the report was going to play in these proceedings, but that had nothing to do with the type of information that we are presenting.

Q What part was it intended to play in this proceeding?

A We understand that the report was to be introduced as evidence on the assumption that the information contained in here would be of interest to the Court in making their decision on the constitutionality of Amendment 7.

Q Then, that was your objective in preparing this report?

A Yes, the objective was to prepare a document which would be useful to the Court.

Q You sought to advise the Court there that there are different types of terrain in Colorado? You think that is informative of the issues in this case?

A The issues?

Q I say, do you think that information is useful to the Court in this instance?

A We were told that it would be useful. This is why we went ahead with it. I don't know personally whether it is of value or not. We went ahead on the assumption that it would be. Our task was clearly defined by the Attorney General's office to look at the factors we would normally look at in economic analysis, and topography and terrain is one of the factors.

Q Just what importance or vitality of the issue was what type of people live in a different community, whether Mexican or what not, what did that have to do with the issues in this case?

JUDGE BREITENSTEIN: Isn't that a matter for this Court to decide?

MR. GINSBERG: Yes, certainly, it is ultimately, but I am trying to get to the basis or purpose behind this report. I don't intend to be too lengthy. I think it is obvious I am trying to be helpful to the Court, as they represent they are trying to be helpful to the Court in furnishing this.

JUDGE BREITENSTEIN: Go ahead.

Q Now, you refer to Mexican population in one segment covered by the report. Just how helpful would that matter be to this Court in determining this constitutional question?

A Is is the same question you just asked.

JUDGE DOYLE: Yes, you haven't answered it yet.

A (Continued) I don't know how helpful it would be to the Court.

Q In approaching this report, did you take the view every segment of the economy ought to have separate representation? How many different types of economy exist in the one district of Denver?

A I am sorry, I did not understand you.

Q How many diversified interests are there right in one city, the City of Denver?

A I have no idea.

Q A great number of them, aren't there?

A I would imagine, yes, sir.

Q Do you think each of them by the reason of their type of industry is entitled to representation on that basis?

MR. ZARLENGO: Your Honor, we object to this line of testimony. These are matters for the Court to pass upon. We put this man on who has prepared an objective study, an economic study, and the weight of that is to be determined by the Court. He isn't making any recommendation as to how apportionment should be made.

JUDGE BREITENSTEIN: I think that's true Mr. Ginsberg, I don't understand that this witness tried to make any recommendations or do anything but make an objective analysis. I notice on page x of his report, they have a statement of objectivity of analysis. Maybe that has some materiality. I don't know.

MR. GINSBERG: May it please Your Honor, I listened to the testimony of this witness and the report and previous testimony and they are all of the same vein and same character. By this type of testimony they are trying to testify a breach of the provisions of the constitution of this state and the federal government. They create fanciful reasons for doing so. This is a cross-examination and my purpose, briefly stated, is simply to show that their attempt to dissect the state into territory representing different interests serves no useful purpose in this case at all, has no bearing on it.

JUDGE BREITENSTEIN: That may be true, Mr.

Ginsberg. You may go ahead, but I have just got one request. Let's leave the argument until the end.

MR. GINSBERG: All right, sir, I will try to avoid that as much as possible, Your Honor.

JUDGE BREITENSTEIN: All right.

Q I ask you, sir, confining your examination that you supervised to Denver alone, you find many diverse areas in this city, diversified a whole lot more than you have in your report of these different sections of the state, is that correct?

A I don't know. I haven't looked at interests. I have tried to identify the major economic forces at work in various parts of the state. This is not in my opinion the same as interests. So, I can't answer your question.

Q You think each and every economic force in the state has to have separate representation?

A I am making no comment on this at all. I am simply pointing out what the characteristics of these areas are from the viewpoint of an economist. There is no statement in this report, if you would read it, saying that certain areas should have certain representation. We are simply showing what the character of these areas are.

Q With the purpose of advising this Court and being helpful to it in determining whether or not the method adopted for the selection of senators in this state by Amendment 7 is constitutional or not. That's the objective, is it not?

A Right.

Q And you understand that to be the objective?

A Yes, to be helpful to the Court, yes.

Q Yes, so you analyzed the diverse interests in a statement of that spirit of helpfulness toward the Court.

A Yes, plus being paid for it.

Q Yes, that's usually a motivating force. So, in your ultimate accomplishment, you divided the state into mountain territories, dry land, irrigated, and a separate category, manufacturing, with a viewpoint that in the selection of state senators we ought to select them on a basis of serving these individual economic interests, is that true?

A I didn't say that.

Q What else did you seek to accomplish by the report?

A I think the purpose of the report is spelled out very clearly.

Q Well, stated in simple language.

A Pardon?

Q State your objective in simple language.

A I read it to you out of the report.

MR. ZARLENGO: He has done it about three times, Your Honor.

JUDGE BREITENSTEIN: Let's do it again. Go ahead.

A (Continued) Referring to IX, page IX, objective of the study; the primary purpose of the study is to determine the distinguishing economic, socio-economic and geographic characteristics, if any, of each senatorial district, and to consider the similarities and dissimilarities of the counties making up each multiple county district.

There are two more paragraphs relating to the objective of the study. I would read them, if you would like me to.

Q Just give me a moment. I will read them. So, in your objective you state specifically that your objective is to reconcile a selection of senators under Amendment No. 7.

A Would you point that out to me, please, where we say that?

Q Yes, your last paragraph on page 9, objective of study in the case of state senatorial districts. "It is our understanding that the determination of whether the present districts of Colorado constitute appropriate political entities involves many considerations, as mentioned earlier. Since our analysis is limited to only a portion of the relevant considerations, it is not possible for us to draw any over-all conclusions. Rather, we attempt to present facts and analyses, within our areas of competency, to assist those who must determine whether or not the present apportionment is in violation of the Fourteenth Amendment to the U. S. Constitution." You clearly knew the objective of your employment?

A Well, what do you mean by the objective of our employment?

Q Was to demonstrate to the Court that the method of selection of senators under Amendment No. 7 did not do violence to the Fourteenth Amendment of the United States Constitution.

A That may be the objectives of the people that hired it, but it is not our objective in the study.

Q What other purpose did your study serve than that?

A You want me to go through that again, the purpose?

Q No, what other purpose than the ones just stated did it serve?

A I don't know. You will have to ask your client that.

Q Well, it reverts to your client, and your client was the Attorney General.

A Yes.

Q And you were paid by the Attorney General of the State of Colorado for the services?

A That's correct.

MR. GINSBERG: That's all.

MR. CREAMER: I wonder if I might ask just one question, realizing that it is out of order for two attorneys on the same side?

JUDGE BREITENSTEIN: Before you do that, I had the feeling during the last examination that there was some perhaps misunderstanding in use of terms. There is a difference between the word "objective" and the word "objectivity", and I wondered if counsel weren't talking about one and the witness about the other.

MR. GINSBERG: I didn't quite follow, Your Honor, on that.

JUDGE BREITENSTEIN: Well, there is a difference between "objective" and "objectivity", and I had the feeling that you were talking about objectives and the witness was talking about objectivity.

MR. GINSBERG: I was definitely talking about objectives.

JUDGE BREITENSTEIN: I thought there might be some areas of misunderstanding, so I mentioned it.

MR. GINSBERG: That was clearly my intention.

JUDGE BREITENSTEIN: I understand. Go ahead.

FURTHER CROSS-EXAMINATION

BY MR. CREAMER:

Q Mr. Coddington, in your study you have broken the state down into four basic geographical regions, and

you have indicated those on the map as you mentioned. Then, within that same map, you demonstrate by a heavier outlining what I gather is the senatorial district within those divisions, is that correct?

A Yes.

Q Now, may I ask you this, and it is necessary to arrive at it, is there contained in your study any specific data by which we were able to ascertain anything more than the general facts that there are topographic, geographic, historical and economic factors variant in the several districts? That is, can we ascertain any facts from which we can determine how geographical, economic, historical and topographic circumstances relate to the ratio of representation of these districts, one to the other?

A It seems to me that the answer to your question is that you can use this report however you please, if you want to relate the information that's in here to the question at hand, but there was no purpose—the purpose of the report itself was not to relate these geographic, economic and socio-economic to the question. It was simply to give background information which might be useful.

JUDGE BREITENSTEIN: Will you pardon me, Mr. Creamer?

MR. CREAMER: Certainly.

JUDGE BREITENSTEIN: You mean this, that it was your task, as you saw it, to present facts but not to interpret those facts? Is that a fair statement?

THE WITNESS: I think there are two types of interpretations that we are talking about, if I might clarify this. There is interpretation in this report, but the interpretation is that which is necessary for any person doing an applied economic study to make the mass of data somewhat useful and understandable to most people.

Now, beyond that, we have not gone beyond that particular step. We have tried to present useful information, and that's it.

JUDGE BREITENSTEIN: I see. Go ahead.

Q (By Mr. Creamer) Let me try to place the matter in one example. Perhaps that will simplify matters. You have an area called the south central area on your map. One of the senatorial districts involved in the south central is District No. 23, which is Las Animas County, and it has approximately 90,900 people in it. Another of the districts involved in that area is Huerfano, Costilla, and Alamosa Counties, if I am not mistaken, and they have approximately 22,000 people in them, and the third area is District No. 31, Saguache, Mineral, Rio Grande and Conejos Counties, is that correct? I mean, those three senatorial districts are comprised in what you call the south central area.

A That is correct.

Q Now, adding 23, 30 and 31 together, we get about 46½ and 20—about 66,500 people more or less resident in that particular region. Now, each of the three districts has one senatorial representative or the aggregate of this south central region has three such representatives, is that correct?

A That's my understanding.

Q All right, now, is there anything in your report or any place in your report or any endeavor in the report to demonstrate any kind of formulation whereby we would be able to relate this representation of three representatives for 66,000 people in the south central area, for example, to the representation of 118,000 people immediately to the north in Pueblo by two representatives? I mean, is there anything, any logical relationship, which you state is ascertained from your report of a representation of 59,353

persons represented in Pueblo, immediately to the north, and approximately 22,000 per representative in the south central region immediately below?

A I understand what you have been talking about, but I don't understand what your question is.

Q My question is, does your report after considering the factors that you have mentioned as being included in it, which as I understand are topographical features, socio-economic features, economic features, generally all of these things, is there anything in the report that explains why it is rational that there be two persons representing 118,000 people, and three persons representing 66,000 people?

A There is no specific discussion along the lines of your question, no, in the report.

Q Now, you have mentioned among other things locus of ethnic and likewise particular groups. For example, I think you mentioned that there are 39% Spanish surnames in the south central area. I don't know what the statistic might be in other areas and it doesn't matter particularly what it is, but assuming that that is the case, is there any relation anywhere in your report to the representation of ethnic groups, that is let us say, in the south central area, to ethnic groups of the same kind, let us say, in the Denver area?

A No.

Q If there is a predicate for ethnic groups constituting a consideration factor here, does your report demonstrate anywhere any reason for a different weighting of the ethnic group south centrally located and located in Denver?

A Well, I think it does in this sense, that when we are doing an economic analysis of any area, the things that we look at primarily are the unusual factors. Let us say unusual in the sense they are different from the average.

In the south central region, you have 39% of the people with Spanish surnames. This would be an important factor and is an important factor in economic analysis of that as a geographic area. Looking at Denver, as a whole, to do an economic analysis, there may be more people of Spanish surnames in Denver, I don't know, but the percentage of people with Spanish surnames is very small. When you look at Denver from the viewpoint of an economist, other things such as the city's position as a trade and transportation center are much more important and deserve much more consideration.

Q Mr. Coddington, on the whole in your report I take it that we are able to ascertain that there are topographic, geographic, historical, economic or socio-economic differences in different areas of the state of Colorado and in different counties within those areas, is that correct?

A With the exception of the word "historical", which we haven't gone into, it is correct.

Q Very well, but from this study, I take it we are not able specifically to determine whether the given senatorial representation of any area aggregately or any part of an area, any district within the area, or those districts, one to another, have any particular formulated relation, is that correct?

MR. ZARLENGO: Object to the form of this question. These are the very matters that the Court will have to determine.

MR. CREAMER: Well, I don't think so. I am asking about whether there is anything in this report that would give us that.

JUDGE BREITENSTEIN: I think it is a proper question. Overruled. Go ahead.

A Would you state the question?

Q I would ask the reporter to read it.

(The reporter read the pending question.)

A I am not sure I understand your question completely. I will take a try at this, that the report does not go into the relationships of the economies of individual areas. It does not tie these relationships to the representation. There is no effort made to do that in the study. Is that—

Q That essentially was what I was endeavoring to find out. Now, if I were further to ask you from this study which contains topographic, geographic, economic and socio-economic, but not historical relationships—if I were to ask you, given a senate of 39 members, given everything you know about the County of Pueblo and everything that's in this report, given the population of the County of Pueblo, at 118,000 persons, could you state how many representatives on this, topographic, geographic, economic and socio-economic, the County of Pueblo ought to have in the Senate of Colorado?

A I couldn't state.

MR. ZARLENGO: We object to this question. It is immaterial.

JUDGE BREITENSTEIN: Well, I am bothered about this question, Mr. Creamer, because it seems to me that that point was not covered by direct examination, and for the purposes of that question he is your witness. You would be bound by the answer.

MR. CREAMER: I think he already answered it, and the answer was no. I would be bound by no.

JUDGE BREITENSTEIN: All right, go ahead.

MR. CREAMER: I think he did answer the question, if it please the Court. I think perhaps it is outside of scope. I am not trying to go beyond it. I regret it, except the re-

port is rather massive and none of us have been able to digest what it contains in it.

JUDGE BREITENSTEIN: Go ahead.

Q (By Mr. Creamer) I take it then, Mr. Coddington, that in essence what you have done is simply compile all of those data you think might have a utility and classify them, first, by district, one of your four major districts, and then by senatorial districts within those major districts.

A Essentially, that's what has been done.

Q And you have not attempted then to apply your data specifically to the representational relations that exist between districts or among them in a given territorial subdivision, nor have you endeavored to project what might be a proper distributing relationship on the basis of topographic, geographic, and economic factors you have discussed.

A No, we have not done that.

MR. CREAMER: Thank you very much.

JUDGE BREITENSTEIN: Any other examination of this witness?

MR. KITCHEN: Yes, sir.

JUDGE BREITENSTEIN: Mr. Kitchen, how long will your examination take? We have almost reached the time for afternoon recess.

MR. KITCHEN: I think no more than five minutes, Your Honor. I have just a couple of clarifying questions I would like to ask.

JUDGE BREITENSTEIN: All right.

FURTHER CROSS-EXAMINATION

BY MR. KITCHEN:

Q Mr. Coddington, on this last point I notice on Part

2, page 64, you do have a tabulation of the population and the number of senators and the percent of the number of senators to the total for each region, is that correct?

A That's correct.

Q Was that done in any attempt to justify or criticize the representation in the senate, as far as you were concerned?

A The purpose of that particular table—as you can see, it is added on to the end of the report—is to give information primarily to people that might be looking at this report sometime in the future. This is information we felt that might be of interest to anybody reading the report, but it really had no part of the analysis.

Q This is a summary statement, is that correct?

A Well, it is.

Q Of the representatvie facts as they apply to these regions.

A Yes, in a sense, it is.

Q I also had one other thing I wanted you to explain. Perhaps I am ahead of you on your errata sheet, which I don't have. On Part 2, page 59, I notice you have what looks like a map of New England, and then a note under it with regards to width and vehicles and so on. I wonder, has this been corrected or—

A That's covered on the errata sheet.

MR. CREAMER: Did you say page 59?

MR. KITCHEN: Part 2, page 59.

MR. CREAMER: Mine is a map of Colorado with a lump of red stuff and two lines below crossed out in ink.

Q Perhaps you would explain this.

A This is a typographical error. The note on the bottom should be deleted. We deleted it on some of the pages, but not all.

Q Is that in the errata sheet?

A Yes, sir.

Q I see, the red lines are a map of New England superimposed over a map of Colorado, is that correct?

A That is correct.

Q Was it part of your assignment either to justify or to criticize the apportionment or districting of senators under Amendment No. 7?

A No.

Q Was the compensation which you were to receive for the use of your report contingent upon the result?

A No.

MR. KITCHEN: Thank you.

JUDGE BREITENSTEIN: Any other questions of this witness?

That's-all, Mr. Coddington.

The Court will take the afternoon recess at this time. We will be in recess ten minutes.

(The Court recessed at 2:55 o'clock p.m. and reconvened at 3:07 o'clock p.m.)

MR. SEAVY: Call Mr. Lawson.

— JOHN P. LAWSON

called as a witness by the defendants, being first duly sworn, on his oath testified as follows:

DIRECT EXAMINATION

BY MR. SEAVY:

Q Will you please state your name.

A John P. Lawson.

Q Where do you reside, Mr. Lawson?

A I reside in Denver, Colorado. 2026 South Fillmore Street.

Q What is your occupation or profession?

A Currently I am executive assistant to the Governor of Colorado.

Q How long have you been so employed?

A Since January 8th or 9th of this year.

Q And would you relate your educational background?

A I grew up and was raised in Rocky Ford, Colorado, a couple of years of high school, went to the Naval Academy at Annapolis. I was in the War, Class of 1921, first class year. Spent about four months and was turned back before I graduated because of the disarmament conference.

MR. CREAMER: I wonder if Mr. Lawson could speak just a little more loudly?

JUDGE BREITENSTEIN: Yes, the accoustics aren't too good.

A (Continued) Thank you, sir. I then spent one year at Colorado College, a year at the University of Denver, after which I received an A.B. degree, and then another year an M.A. degree, and I have since that time spent approximately 8 or 10 months at the University of Chicago and University of Michigan. I did not get—I have not obtained any degrees beyond the M.A., however.

Q And following the completion of your bachelor's degree, what did you do, Mr. Lawson?

A I began to teach political science at the University

of Denver and was employed there as a teacher in one capacity or another from about 1924 until the end of 1962.

Q And in your teaching at the University, what positions did you hold, sir?

A Well, I went through all of the academic ranks. I became a full professor in about 1936 or '37 and am now a professor emeritus.

Q Would you relate briefly to the court the subjects taught during this period of time at the University?

A Well, I taught most of the subjects in the ordinary government or political science that any ordinary government or political science would teach, American Government, state and local, constitutional law, constitutional history, both English and American, political parties, administration and the like.

Q And this I believe you indicated over a 38-year period?

A That is correct.

Q At the University.

A That is correct.

Q And I believe you have also indicated, Mr. Lawson, that you are a near lifetime resident of the State of Colorado.

A I consider myself to be a resident of Colorado all of my life.

Q And in the course of your 38 years of teaching government, you have had I would imagine occasion to relate your teaching to Colorado government in Colorado.

A That is correct.

Q Mr. Lawson, preliminary to the relation of the bicameral system to the present Amendment 7, would you briefly relate the evolution of the bicameral system.

A Well, it seems to me that the bicameral system quite clearly grew out of an accidental breakup in England in the 12—13th century, chiefly of the three estates. Might have gone to a tricameral or gone to a bicameral house. The accident in history and the exigencies of that situation led to a bicameral situation.

Actually, as I read English history, the House of Commons, which is the house most nearly based on population in England, grew out of the necessities of King John in 1213 to get some valuable aid and money from certain counties and Simon deMontfort in 1264 to get aid in the revolution he was then attempting to carry on. In other words, that's the way it started. I don't think anybody thought it up, but once started, as is true of so many things in English history, it stayed, and the British in about 300 years discovered that it needed to be worked over and they did that, began to work it over, and there has been a gradual evolution since that time, I think, and almost at no time, however, until very, very recently have the British either achieved or attempted to achieve anything like an exact relationship of members in the House of Commons to population in the country.

Now, that's going through quite a process, beginning with the Reform Act of 1882, and culminating in an Act of 1898. I don't know if the Court would like to have me go into that in detail or not.

Q Was the bicameral system, as it was known in England, adopted or brought into this country during the period of colonization?

A Yes, sir, with the exception of, I believe, Pennsylvania, Georgia, for a time it was in the colonies. The thirteen English colonies brought with them the bicameral system.

Q At that time was there any historical fact or prece-

dent relating to the number of representatives in a upper and lower house.

A. No, sir, I don't think so. The upper house in British history and in British government today is by all odds the more numerous of the two, because of its hereditary character. The House of Lords, that is, but at times it became less numerous, depending upon how many lords got themselves killed as in the Wars of the Roses and things of that kind, so I think there was no relationship of that nature definitely established at that time.

Q. Did any such relationship as to numbers in the upper house and lower house evolve in the American bicameral system or the use in America of the bicameral.

A. Yes, in the colonial period, it was customary in the Royal colonies, and to a certain extent in the proprietary as well, for the upper house in effect to be the governor and his council. This was generally a small body, maybe ten or a dozen or fifteen, twenty, something like that.

The lower house, which was frequently known as the assembly, on the other hand in the colonial period was based upon a very, very rough approximation of population. Actually more based on counties in the south and towns in New England, and both in the Middle Colonies, but it did represent people to some extent and was larger.

Q. Perhaps you have described it to a certain extent, but was there a natural consequence that flowed from this disparity in numbers in the two houses as to representation?

A. Yes, I think there was, and it might have flown from other historical factors as well, and that is the great difference in representation as developed in America since say James Donald roughly and the beginning of the Colonial Period and in England. As you know, in England every member of the House of Commons considers himself

a representative of the entire Empire, and it matters not where he resides, and as a matter of fact, about 20 to 25 per cent of the House of Commons consists of non-residents. Winston Churchill, for example, is not a resident of the district he represents, but in America because of the diverse situations, it quite early became the custom that representatives should be tied to the locality, and now it is extremely rare, although constitutional as far as the Federal constitution is concerned, but extremely rare that any member of Congress not reside in the district from which he comes. That is, I think, one contribution that we perhaps unconsciously made during the colonial period.

Q Did there also evolve from the use in America of this bicameral system a difference in which might be called a representative, or the lower house, representing people, and the upper house representing interests?

A I would think so, because the lower—the upper house, pardon me, in the colonial period represented nobody but the Royal Governor or the proprietor, whereas the lower house represented people. Consequently, as after the Revolution when the Senate replaced the old Governor's council, it tended less, much less, to represent people per se than did the what used to be called assembly and then became known as the House of Representatives. That is correct.

Q Well, would you explain in a little more detail—I am not certain that I follow—would you explain in a little more detail the representation of interests differing from the representation of people?

A I think we had good precedent in England, if I may go back there. The House of Lords represents nothing but itself, it has been said, and that is certainly interest representation. The then Governor's Council, the American Colonial Period, represented an interest, to wit the royal interest, in the Royal Colonies.

Now, after 1776, the Declaration of Independence, we embarked on our own course. It seems to me quite logical to expect that we did find that the upper houses were much less closely tied to people because, no doubt, of their background than were the lower houses which had prior to that time been tied more closely to people. Do I make myself clear, Mr. Seavy?

Q I think so. The interests then you speak of, you have mentioned the royal interests being represented in the upper house—would you give examples of the interest being represented in the upper house in this country? What I am looking for is what you are meaning by interest.

A Property in the early history. Wealth in some of the northern colonies, the Church, one church or another, Unitarian or whatever the church might be that was dominant, interests of that nature. Of course, from that time on, other interests, such as where one lived—that has always been very important in America because of the large area, and in the case of Virginia, for example, the Tidewater versus the Piedmont, with the Tidewater rather heavily represented and the Piedmont or mountain district not heavily at all represented in that body.

Q You mentioned area. Has there been in the history of this country since the time which you are now speaking of generally a representation of economic interest in the upper house?

A. In fact, but not in constitution, yes. In fact, I think that is correct.

Q Now, does in your opinion, Amendment 7 bear any relation to this evolution of the bicameral system in this country?

A Well, in my opinion, number 7 pretty well epitomizes one of the reasons for a two house system in the average American state. It seems to me that if both of the houses were based totally and solely on population then they

or one of them would be redundant, the unnecessary, the superfluous.

Now, of course, there is the check and balance value of two houses, but I have always felt that that has been overdone and that representative-wise certainly it seems to me that No. 7, the amendment, did rather closely accomplish what in fact has been accomplished earlier, much earlier in our history in the American state, that is. Not in regard to federal government.

MR. SEAVY: Nothing further, sir.

JUDGE BREITENSTEIN: Cross examination?

CROSS-EXAMINATION

* * * * *

FURTHER CROSS-EXAMINATION

BY MR. KITCHEN:

Q What specifically was the arrangement of the legislatures of the states at the time of the adoption of the Fourteenth Amendment?

A Mr. Kitchen, I made an effort to determine that and historically it is difficult to nail it down, because of lack of resources, but I would say that it was precisely or very nearly precisely the pattern which I have been discussing in my testimony.

Q Isn't it true, Mr. Lawson, that no state has ever—or, rather, let me amend that—that no state in the union at the time of the adoption of the Fourteenth Amendment had a system whereby both houses were selected strictly according to population?

A I believe that to be a fact, sir.

Q Now, isn't it also true that both the Federal Constitution approved by all of the states and the Seventeenth

Amendment of the Federal Constitution approved after the Fourteenth Amendment specifically recognized the existence of the bicameral system in the state governments?

A Yes, sir. The whole United States Constitution, as a teacher, I would think does.

Q And expressly, isn't that correct?

A Quite right, sir.

Q Isn't it also true that the Fourteenth Amendment expressly makes it the duty of Congress to see that the terms of the Fourteenth Amendment are carried out?

A Yes, sir, that's Section 5, I believe.

Q Isn't it also true that Congress has approved and admitted to the union the states of Hawaii and Alaska within the last several years?

JUDGE BREITENSTEIN: Well, that's a matter of common knowledge, also a matter of law, Alaska and Hawaii have been admitted in the last few years.

MR. KITCHEN: Well, it is also a matter of common knowledge as to the disposition of the Northwest Territory, the regulations under that.

JUDGE BREITENSTEIN: Yes, I understand. I was just trying to relate the examination to facts and opinions of the witnesses on the facts, rather than the law. Go ahead. Sorry to interrupt you.

Q Is that correct, Mr. Lawson?

A Would you repeat it, please, sir?

MR. KITCHEN: Would you repeat the question?

THE REPORTER: "Isn't it also true that Congress has approved and admitted to the union the states of Hawaii and Alaska within the last several years?"

JUDGE BREITENSTEIN: In effect, the question

was whether or not you knew Alaska and Hawaii had been admitted to the union in the last few years?

THE WITNESS: Yes, sir.

Q (By Mr. Kitchen) What effect did those two states have with effect to the bicameral situation—

MR. CREAMER: If it please the Court, this is not a matter of fact. It is expressly a matter of law. We can find the statutes.

JUDGE BREITENSTEIN: I know. Let's make progress.

A They both have two houses, bicameral system.

Q Do the upper house or the Senate in Alaska or Hawaii—are they apportioned according to any theory of population or on some other theory?

A Mr. Kitchen, I must confess I am not positive. I would have to say I am not sure.

JUDGE BREITENSTEIN: What difference does it make, one way or the other?

I asked you a question, Mr. Kitchen. What difference does it make, one way or the other?

MR. KITCHEN: Well, we think it makes a great deal of difference, Your Honor. Mr. Creamer has been talking about relating population to the houses of the state legislatures, and we think that the houses of the state legislatures—

JUDGE BREITENSTEIN: My point is we are concerned with Colorado and a question of law as to whether a provision of the Colorado constitution violates the federal constitution. Now, so far as Hawaii and Alaska are concerned, we are not deciding whether something is wrong out there.

MR. KITCHEN: Well, I understand, Your Honor, but

I think this is pertinent with regard to the terms of the Fourteenth Amendment, the fact that a branch of the federal government has accepted those constitutions as guaranteeing a representative form of government and recognizing the history of the bicameral system in the United States.

JUDGE BREITENSTEIN: Very well.

MR. CREAMER: If it please the Court, I might point out, and this is a legal objection, Baker versus Carr very clearly demonstrated that the guarantee clause was not what was involved in this matter and we are not interested in that.

JUDGE BREITENSTEIN: That's what I remember. That's what the controlling opinion of Baker versus Carr says.

Q (By Mr. Kitchen) With regard to your testimony concerning the initiative and referendum, I think you testified with regard to the ease of amending the Colorado constitution, is that correct?

A Yes, sir.

Q Have you made an analysis of initiative and referendum among the several states?

A I have a continuing analysis, Mr. Kitchen, and I sought to bring it up to date to the best of my ability in the last couple of days, yes, sir.

Q Would you please describe it or can you classify the various types of provisions in the state constitutions with regard to initiative and referendum?

A Yes, there are two kinds of initiative and also referendum, two each, one applying to statutes, both initiative and referendum, one applying to constitutional provisions.

Colorado has all four of those. Most states do not.

Colorado was quite early in establishing the initiative and the referendum, relatively early. It came during that so-called progressive period in American history of Theodore Roosevelt and Woodrow Wilson, 1912, along in there, and I think we have unquestionably in this state one of the most, if I may use the term, liberal or easily applied systems of initiative and referendum as applied both to constitutional amendments and as applied to statutes. I can go into that at greater length if you wish me to, or not.

Q Well, with relationship, for example, to the requirements of the number of electors necessary to initiate an amendment, can you compare that to Colorado and other states?

A We require 8% and that is the exact median on statutes and it is low on constitutional amendments, the 8%.

Q Low with relation to other states?

A Yes, sir, relation to other states. We also—pardon me.

Q I am sorry.

A We also relate it to the Secretary of State, the vote cast for Secretary of State, 8% in a case of initiative, 5% in referendum. Many states relate it to the vote cast for governor. There would be 35,000 difference then. It is easier to get 35,000 less than the total number. We also have no provision in Colorado that provisions on the initiative be scattered about the state, so many per county. Some states have that, making it more difficult. We also in this state provide that the issue shall be determined by the people in event of an initiative at the next general election, but the issues shall carry if carried by a majority of those voting on the issue not at the election. That is easy, because generally fewer people vote on issues than in the election. That is, many people skip the issues, and then finally we have the direct system. That is to say, a proposal to amend a constitution or to initiate a statute in this

state is accomplished by a petition. It then does not go to the legislature. Some states have the indirect system in which it goes to the legislature and then possibly to the people. All of those factors, I think, Mr. Kitchen, put Colorado in the class of state where it is relatively easy when it comes to I and R, initiative and referendum.

MR. KITCHEN: Thank you very much.

JUDGE BREITENSTEIN: Any further questions of this witness?

MR. ZARLENGO: No further questions.

JUDGE BREITENSTEIN: That's all.

THE WITNESS: Thank you, sir.

* * * * *

INTERVENOR'S WITNESSES

Joseph F. Little

called as a witness by the Intervenor, having been first duly sworn, on his oath testified as follows:

DIRECT EXAMINATION

BY MR. KITCHEN:

Q Would you please state your name, residence and occupation.

A My name is Joseph F. Little. I reside at 3675 South Franklin Street in Cherry Hills Village, Arapahoe County, Colorado. My occupation, I am an attorney at law.

Q Would you please state your particular experience in politics and your background with regard to Amendment 7?

MR. CREAMER: If it please the Court, Mr. Little has testified before in this proceeding, and I believe at the time of his previous testimony Mr. Little's background and qualifications and political experience were gone into at

some length, besides which I think all of us are fully aware that it has been extensive, and I wonder if it is necessary to repeat it? It is already on the record.

JUDGE BREITENSTEIN: Any particular reason for the repetition of this? It was given at the hearing last summer.

MR. KITCHEN: I wasn't certain it had been testified to last summer. If it was, I certainly will not go into it again.

MR. CREAMER: Yes.

Q (By Mr. Kitchen) Mr. Little, did you testify to that subject last summer?

A I believe I did, yes, sir.

Q I believe that as a part of that testimony you stated that you were a member of the group which formulated and presented Amendment 7 to the public in Colorado, is that correct, sir?

A That's correct.

Q As a member of that group, what particular recent history of Colorado did you have before you in formulating and presenting the amendment?

A Well, to start out with, I guess 1932, if that's what you mean, when the people of this state adopted and initiated law apportioning the legislature. Then, in 1938, there were a group of us that proposed, I believe it was a constitutional amendment. At least, it was an initiated measure to do away with this system of voting at large and try to district the state, so that the voters would only have to vote for one candidate for the Senate or House of Representatives. We didn't get enough signatures I believe. I think we failed by about 3 or 4,000 votes to get that amendment on the ballot.

Then, in 1954, I think it was the next—no, 1953—the

General Assembly adopted some changes in the apportionment law, and in 1954 there was a constitutional amendment somewhat similar to Amendment No. 7. I don't believe it had the districting provisions in it. That is the prohibitions against more than one senator or one representative per district. That was defeated, and then in 1956 there was another constitutional amendment. I think that was commonly called the "Nicholson Amendment." That would have based the Senate and House of Representatives strictly on population, and again there was no districting provision, and that was defeated pretty badly.

Then, in 1957, we had a committee appointed by the Governor to go into the entire legislative problem, the problem of reapportionment, and then in 1962 we had these two further constitutional amendments, Amendment No. 7 which was adopted and Amendment No. 8 which was defeated.

Q What other state agencies besides the Office of the Governor made and published studies on the reapportionment problem?

A I believe it was—I know the League of Women Voters put out one.

Q I am talking about government agencies.

A Government agencies. Well, there was the Colorado Legislative Council that put one out in 1961.

Q Now, in addition to that, there were other non-governmental agencies and organizations who were studying this problem in this period of time, is that right?

A That's correct.

Q Was the information which you had in front of you relative to the Intervenor's Exhibit C, the report of the Executive Committee of the Governor's Commission, is that the report that you are talking about that you had before you? Exhibit C, which is already in evidence?

MR. CREAMER: Report who had before whom, when?

JUDGE BREITENSTEIN: Mr. Kitchen, that question was pretty indefinite with no antecedent to the several pronouns.

MR. KITCHEN: Well, Your Honor, the prior question had to do with being a member of a group which formulated and presented Amendment No. 7, and the witness has testified as to the matters which they considered, and I am asking the witness if he is referring to Exhibit C as on of those matters.

MR. CREAMER: If it please the Court, this is rather a fundamental objection. Amendment 7 is treated by this question as though Amendment 7 were a proprietary item of some kind, belonging to a group which defined it.

Sometimes legislative history is useful in interpreting legislative enactment, but legislative history is not interpreted to go behind an initiated measure which is presumptively originated only in one place, that is popularly.

What the group of which Mt. Little was a member thought if and when it drafted this amendment has practically no meaning whatsoever. The only thing that may be utilized to determine what is meant by a popularly initiated or referred measure is whatever may be contained within that measure.

Inasmuch as it may not be assumed that Mr. Little or anybody else had a proprietary right of formulation or more particular than general information concerning the matter, his opinion when he formulated it really, with deference to that opinion, which is most useful in many areas, is not governing in these circumstances.

JUDGE BREITENSTEIN: Mr. Creamer, the members of the Court are, I am sure, aware of the difference between legislative history and the history relating to the

initiation and adoption of an initiated constitutional amendment, and having that in mind the objection will be overruled.

MR. CREAMER: Very well, Your Honor.

JUDGE BREITENSTEIN: Read the question.

(The reporter read the pending question aloud.)

MR. KITCHEN: Let me withdraw the question and recast it.

Q You have referred to a study which was made by the Governor's Commission, is that correct? Were you a member of that commission?

A I was.

Q Is the report of the Executive Committee of that commission, the Exhibit C which has been admitted in evidence herein?

A I am not sure what Exhibit C is. I would have to see it.

Q Exhibit C is in seven volumes and entitled, "Governor's Reapportionment Commission Report of Executive Committee, Ed C. Johnson, Chairman." Is that the committee you are referring to?

A Yes, sir. Well, now, that wasn't the one. I was referring to, but that I understand was before the committee. What I was referring to was the Colorado legislative council research publication, "Reapportionment of the Colorado General Assembly". That's the copy I have. That's what I thought you were referring to.

MR. KITCHEN: And that I believe has already been admitted as Amicus Curae Exhibit A, is that correct?

MR. CAROSELL: Number 1.

MR. KITCHEN: Oh, I see.

Q You were referring to what has been marked as Carosell Exhibit No. 1, is that correct?

A That's right.

Q Now, in addition to this particular sequence of events with regard to reapportionment which you refer to, what other factors were considered by your group in formulating Amendment No. 7?

A Well, first of all we wanted to make—

MR. CREAMER: May I ask one question or make one inquiry or objection or whatever it may be? It is a little informal. We did have the problem first of the antecedent and now it turns out to be the formulating group and then there was my other objection which was overruled, but if we are discussing the problem of the formulating group, may we know who or what the formulating group was?

JUDGE BREITENSTEIN: I think that's desirable, Mr. Kitchen. That's what I meant when I made the comment before I wasn't quite sure what groups and what documents we were talking about.

MR. KITCHEN: I was attempting to shorten it, Your Honor.

JUDGE BREITENSTEIN: I think we better have the groups responsible for these various reports clearly identified.

MR. KITCHEN: Yes, sir.

Q Now, you are a member of the Board of Directors of the Federal Plan for Apportionment, Inc., is that correct?

A Yes, sir.

Q Were you a member of a committee which participated in the drafting of Amendment No. 7?

A Yes, sir.

Q And do you recall the other members of that committee other than yourself?

A You were one. Governor Johnson was one, and I can't recall.

Q Governor Vivian?

A Yes, sir.

Q Former Chief Justice Alter?

A Yes, sir, mostly the lawyers in the group along with Governor Johnson.

Q Now, what factors or what items were considered by this group in the formulation of Amendment No. 7?

A Well, first of all we wanted to get rid of the provision in the state constitution which was never followed that there had to be a state census every five years, which we did.

Secondly, we wanted to get rid of the situation where the number of senators and representatives in our larger counties; the number of candidates, was so many, but most voters didn't know whom they were voting for, and the result of it was that the candidate whose name began with A, B, or C, or who was on the top line of the voting machine in the primary election, were successful regardless of their qualifications.

We wanted to get some intelligent—well, we wanted to give the voters an opportunity to exercise an intelligent choice.

Now there were those things. The next thing we had to consider was the fact that this is one of the fastest growing states in the country. There had been a considerable complaint about the fact that the House—the populous sections of the state were not properly represented.

On the other hand, there were other factors, too, to take into consideration, such as the state's welfare, the topography, its historical background, the various sections of the state which were created by mountain ranges. In other words, topography.

And, then, in addition to that, we had some other factors which had to be considered. First of all, on the one hand, we had many complaints and arguments being made that Denver was being discriminated against in the apportionment of the legislature, and on the other hand, there was considerable discrimination on the other side, too. Pretty hard—I wouldn't classify it exactly as discrimination, but there were certain advantages which the City of Denver and other home rule cities of this state enjoyed over the other areas of the state, which were also creating considerable unrest and confusion and dissention.

There were a whole lot of others. There was, for instance, you have got ethnical grounds, language barriers. In many of the counties of this state, particularly along the New Mexico border, Spanish is the language. It should be that a legislative, a senatorial, district should be somewhat homogenous and, well, I just couldn't consider all of those.

Q You were talking about home rule cities. Could you describe for the record, or did you analyze, the number of home rule cities in the State of Colorado?

A I did remember that number. I think somewhere around 27. Now, that's my vague recollection.

Q I will hand you a memorandum and ask you if it refreshes your memory.

A 25.

Q What is the total population of those home rule cities?

A 974,753.

Q What is the population of home rule cities within the metropolitan areas of Denver; and I do not think you were here when we defined those as the City and County of Denver and Adams, Arapahoe, Jefferson and Boulder and El Paso and Pueblo.

MR. CREAMER: If it please the Court, it is obvious that the witness does not know or remember these statistics. If it is pertinent to have them in the record, may they just be read into the record and may we simply stipulate that those are the statistics?

JUDGE BREITENSTEIN: Yes. We will concern ourselves with that tomorrow, Mr. Creamer.

The Court will recess for the day now. The Court will be in recess until 9:30 tomorrow morning.

(The Court recessed at 4:30 o'clock p.m. to reconvene at 9:30 o'clock a.m. the following day.)

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

ARCHIE L. LISCO, et al,

Petitioners,

v.

STEPHEN L. R. McNICHOLS,
etc., et al,

Respondents.

and

WILLIAM E. MYRICK, et al,

Plaintiffs
and
Petitioners,

v.

THE FORTY-THIRD GENERAL
ASSEMBLY OF THE STATE OF
COLORADO, et al,

Respondents
and
Defendants.,

FEDERAL PLAN FOR APPOR-
TIONMENT, INC., et al,

Intervenors.

CONSOLIDATED

Civil Action No. 7501

Civil Action No. 7637

OFFICIAL TRANSCRIPT

VOLUME III

Morning Session
May 7, 1963

Proceedings had before the HONORABLE JEAN S. BREITENSTEIN, HONORABLE ALFRED A. ARRAJ, and HONORABLE WILLIAM E. DOYLE, in Courtroom A, Main Post Office Building, Denver, Colorado, beginning at 9:30 o'clock a.m., on the 6th day of May, 1963, as continued at 9:30 o'clock a.m., on the 7th day of May, 1963.

APPEARANCES:

As heretofore noted.

INDEX

INTERVENOR'S WITNESSES:

JOSEPH F. LITTLE

**Direct Examination
(Continued)**

166

**Cross Examination
By Mr. Creamer**

188

PROCEEDINGS

JUDGE BREITENSTEIN: Proceed, Mr. Kitchen.

MR. KITCHEN: If it please the Court.

JOSEPH LITTLE

having been previously sworn, continued to testify as follows:

DIRECT EXAMINATION

(Continued)

BY MR. KITCHEN:

Q Mr. Little, you are the same witness who was on the stand at termination yesterday afternoon?

A I was. I am.

Q In order, Mr. Little, to take up on your testimony, I believe that you were expressing your opinion as to the factors which were involved in the apportionment of the Senate under Amendment 7. Would you please state what those factors were and are?

MR. CREAMER: I don't mean to interrupt, but I think he was giving some statistical data, and we had reached a point where we were discussing the method of putting it in.

MR. KITCHEN: I am going to come back to that, but we could settle that now.

MR. CREAMER: That's quite all right. I think perhaps we had made some suggestion it would perhaps be faster just to introduce it, the document.

MR. KITCHEN: If it please the Court, I have had marked as Intervenor's Exhibits E and D respectively, an exhibit which is a tabulation of Colorado home rule cities

and their populations, and a tabulation of the registered voters and total population of each county in the state, and if by stipulation we may have these admitted, we can proceed.

JUDGE BREITENSTEIN: You are offering those in evidence?

MR. KITCHEN: Yes.

JUDGE BREITENSTEIN: They are Intervenor's Exhibits D and E?

MR. KITCHEN: Yes, sir, Your Honor.

MR. CREAMER: The only objection would be to the table marked, "Table of Percentage of Registered Voters." I think it is a problem of relevancy, but probably like all the other statistical matter something for the Court to utilize as it sees fit.

JUDGE BREITENSTEIN: Very well, D and E will be admitted.

MR. CREAMER: Mr. Kitchen, which one is D and which E?

MR. KITCHEN: Exhibit D is a tabulation of—I am sorry, Exhibit D is the "Percentage of Registered Voters to Total Population."

MR. CREAMER: D is the percentage of registered voters?

MR. KITCHEN: D, yes, and E is the "Tabulation of Population of Colorado Home Rule Cities."

MR. CREAMER: Thank you.

JUDGE BREITENSTEIN: Mr. Kitchen, I would like to have someone explain to me before you go on, I see two counties have more registered voters than population. How can that possibly be?

MR. KITCHEN: I am going to ask the witness to explain that.

JUDGE BREITENSTEIN: All right, go ahead.

THE WITNESS: Do you want me to explain that?

JUDGE BREITENSTEIN: I will let Mr. Kitchen do it his way. It seemed phenomenal to me.

Q (Mr. Kitchen) Mr. Little, I would like, if you would please, reiterate the factors in your opinion which were taken into consideration in the apportionment of Amendment 7.

A Well, any apportionment measure, whether it is constitutional or statutory, involves a great number of factors. In other words, it is not just simply a proposition of taking Colorado's sixty-five representatives and dividing it into the 1,750,000 people in the State of Colorado, and say, "We have now one representative for every 27 or 28,000 people," because first of all, population itself is a deceptive factor. It is not absolute. We don't put a voting precinct in a state penitentiary or in an orphanage, and some of the counties which apparently look to be underrepresented may in fact be actually over-represented.

Any political canvasser who punches doorbells, for instance, will find in the process of a canvass—will find numerous parties who are voters in other counties or other states, and yet under the census, and I am reading here from the official publication of the Department of Commerce, Bureau of Census, United States population of 1960 for Colorado, number of inhabitants, and reading on page V, in accordance with census practice dating back to 1790, each person enumerated in the 1960 census was counted as an inhabitant of his usual place of residence or usual place of abode, which is generally construed to be that place where he lives and sleeps most of the time.

In the application of this rule, persons were not always counted as residents of places where they happened to be found by census enumerators. Persons in the armed forces found on military installations were enumerated as residents of states, counties and minor institutions—as in 1950, college students were considered residents of communities in which they were residing while attending college, and it goes on.

Now, specifically speaking, in answer to your questions, we have a queer situation in Colorado. Some counties, and Hinsdale county is one, and Gilpin is another, the actual census figures are less, and that includes men, women and children and incompetents and so on. Those are less than the actual number of votes cast in those counties for the simple reason the counties had a large number of voters, qualified residents, who lived in other counties who voted by absentee ballot.

Let's take specific considerations along that line. El Paso county, the Air Force Academy. It has the Air Force installation, numbering between 15 and 20,000, Fort Carson at which a whole division is now stationed, Ent Air Force Base. It has NORAD. Again, as I say, most of those people are temporarily there. The census counted them as inhabitants of El Paso County. They were probably voters from some other section of the state or nation.

You cannot say that people are entitled to be represented twice. In other words, the man from Gilpin County living in Denver, who votes an absentee ballot, is represented by his representatives from that district and not from Denver.

So, in Colorado you have two things, the counties which have smaller population, or less industry and business or declining industry and business, and governmental installations and so on, are going to show, as Gilpin and Hinsdale, less population than the actual voting population.

On the other hand, counties like El Paso and Denver, because Denver has not only Lowry Air Force Base but we are the seat of state government and I know numerous state officials who keep their voting addresses in other counties, and Denver is also the scene of any large number of federal installations as well as defense plants, with a very high percentage of transient population. What it amounts to in absolute figures is pretty difficult to state. I don't believe you can get an absolute formula for it, but the situation is this so-called disparity between representation and population is not what it appears to be in the figures.

Q Mr. Little, referring specifically to Exhibit D which I just handed you, which is on the table there, Exhibit D—

A What?

Q Exhibit D, the comparison of registered voters.


A Yes.

Q Would you point out to the Court where this factor shows up particularly with regard to El Paso County?

A Well, El Paso County shows the number of registered votes at 56,000, a total population of 143,000. The percentage of qualified voters to total population of 39,000—

Q Thirty-nine percent.

A Thirty-nine percent, I beg your pardon, 39,3072. Just along that line, let's contrast it with another one. Here is Gilpin County. These figures are for the registered voters for 1962. I have the tabulation for '60 and it's practically the same. Gilpin and Hinsdale showed just a variation of two or three. In Gilpin County the percentage of number of registered voters to a total population is one hundred five per cent, and in Hinsdale County it is two hundred eighty registered voters to two hundred eight total population or one hundred thirty-four percent.



Q What is the statewide average relationship between registered voters and census population?

A The number of registered voters in the state is 879,075. The total state population is 1,753,947, or an average of 50.1 per cent.

Q With regard to Denver specifically, I believe you had stated earlier your experience in politics in Denver and so on, so I am going to ask you what in your opinion is the percentage relationship of census population which would be accounted for by persons who are not registered in Denver, if you can express an opinion?

MR. CREAMER: If it please the Court, this isn't a matter of opinion. It is a matter of statistical fact. One does not have opinions relative to a statistic. If Mr. Little knows what the relationship is, I suppose he could testify. It isn't the problem of an opinion at all.

MR. KITCHEN: Your Honor, Mr. Creamer quite generously yesterday conceded Mr. Little's qualifications as an expert, which were gone into in detail in his first hearing.

MR. CREAMER: No, I didn't.

MR. KITCHEN: One of his qualifications was that he had been for many years a precinct committeeman in Denver and County Chairman.

JUDGE BREITENSTEIN: Yes, I remember all that, but as I understand your question—perhaps I didn't understand it—it seemed to me Mr. Creamer's objection is good. It is a matter of statistics. It shows here Denver has a certain number of registered voters and certain population and the percentage is a certain amount. Perhaps you'd better rephrase your question.

MR. KITCHEN: All right.

Q (By Mr. Kitchen) Mr. Little, in the course of your activities that you were speaking of in regard to canvassing in Denver, did you obtain certain information which would indicate the relationship of resident qualified electors in Denver to actual population?

MR. CREAMER: Well, if it please the Court, this is a completely impossible question. In the first place, Mr. Little is not shown to have any knowledge of residence, domicile or anything else of voters. It isn't shown he canvassed anybody at all. Mr. Little has been a gentleman long engaged in politics. Several of us have from time to time, I think.

MR. KITCHEN: I will be happy to go into the witness' qualifications.

MR. CREAMER: It is not a problem of qualifications. It is a problem of simple statistics. One doesn't express an opinion of statistics. Either one knows it or doesn't.

JUDGE BREITENSTEIN: I think essentially that goes to the weight of the evidence to be given in this trial to the Court. Go ahead.

MR. KITCHEN: Repeat the question.

(The reporter read the pending question.)

Q (By Mr. Little) Did you arrive at such a conclusion, Mr. Little?

A Mr. Kitchen, that's a very variable situation. You take qualified electors, that would have to exclude minors, insane persons and so on.

Q I am referring to the number of persons, such as the persons at Lowry, the government employees, residents elsewhere, and the residents of hospitals who are otherwise qualified voters except for the fact they were not electors.

JUDGE BREITENSTEIN: Mr. Kitchen, stated that way why aren't you bound by the figures which you presented on this exhibit received in evidence? That shows a percentage on a statistical basis. I can't see what you are trying to get at in addition to that.

MR. KITCHEN: Well, Mr. Little has testified as to these persons, Your Honor, and I am trying to get his conclusion as to the relationship, what effect that have on the over-all figure.

JUDGE BREITENSTEIN: Why don't you ask that sort of a question?

MR. KITCHEN: All right.

Q (By Mr. Kitchen) Would you please state what effect these factors have on the over-all figures, in your opinion?

A Well, they would materially alter a representation which would otherwise be based on census figures.

Q All right. Now, I think I interrupted you with regard to further explanation of population factors. Did you have anything further on population factors?

A Well, I mentioned the fact that population, while it is a very decisive factor, is not an absolute factor. I might also state this, that the American Political Science Association allows a variation in population of fifteen per cent.

MR. CREAMER: Just a minute, I really think that what the American Political Science Association allows is hardly, one, germane, two, significant, or, three, to all of his qualifications, to allow Mr. Little to state what it is, is really out of the realm of proper evidence.

JUDGE BREITENSTEIN: Isn't that hearsay?

MR. KITCHEN: The objection wasn't based on hearsay.

THE WITNESS: I wasn't here for all the evidence. I don't know if the pamphlets put out by the League of Women Voters—

MR. KITCHEN: No, sir.

A (Continued) I might say, Amendment No. 8, which was voted on and decisively defeated, allowed a variation of census figures so as to allow the very things we are talking about of thirty-three and a third per cent above the strict population ratio of both Senate and House and a variation from thirty-three and a third per cent to fifty per cent below the strict population. Thirty-three and a third as to the House, as I recall it, and up to fifty for certain Senatorial districts, again to allow for situations we are talking about, which means certain districts under Amendment No. 8 could have had a population of 38,000 and others a population of 15,000. Another thing we have to consider in a—

MR. CREAMER: I don't believe there is even a question pending at the moment.

JUDGE BREITENSTEIN: I don't either.

Q (By Mr. Kitchen) Going back now, you have testified as to population as one of the factors, and I believe, Mr. Little, you were proceeding to answer my previous question as to the other factors which were involved.

A Well, the next would be topography. This state is entirely different from any other state. I am talking from a practical operation of a political entity.

For instance, let's take Jackson County. There are times in the year when Jackson County, the only way to get in, is go to Fort Collins, up to Laramie, Wyoming, and back to Walden, because Cameron Pass is closed and that's it. It's a part of Colorado. It has got to be fitted into some political pattern.

The same thing is true with the San Juan area. There have been times the only way to do it was to go into Utah, with Red Mountain and Wolfe Creek Passes closed. Yet, again, it must be fitted into a state representative pattern.

Again, we must realize not only do we have these mountains, the highest in the entire country, dividing it up, but in addition to that, in the east we have a vast plains area.

Now, good political practice requires voters be allowed and given the opportunity to acquaint themselves with the candidates and the qualifications, and by the same practice candidates like to get around and see as many voters as they can, so there has to be a limit even to a plains representative and senatorial district.

We have counties in this state, like Las Animas County, the largest, which is larger than many individual eastern states and larger than some combinations of eastern states. It is not simply a question of providing a mathematical formula. It could be done. You could reduce population and area both to mathematical formulas, if you wanted to determine representation on that ground alone, that in addition to that there are others.

Q Before you leave the question of area and practical political effect, what specifically effect has this high topography had upon campaigning, for example, in the State of Colorado?

A We used to set up speaker's bureaus, and one of the first things we would do in formulating an itinerary for candidates was to see to it all the high areas and the areas considered inaccessible should be visited first, so the candidates could get in and out. That meant when you were formulating a representative district, you tried to make those districts, the boundary, coincide with the various divides, and that same thing holds true in other considerations, by senatorial and representative districts.

We have the Fourth Congressional District, which is only about a third the population of the Second, and I don't think anybody in the state would dream of changing it for the simple reason it combines the Colorado River basin, completely surrounded and cut off from the rest of the state by the Rocky Mountains, the Continental Divide, and again an elevation, a mean elevation, for the entire district of some 6,000 feet.

Now, again, you can relate that to senatorial districts, because many of our senatorial districts have historically and of necessity coincided, or groups of senatorial districts or districts themselves have coincided with river basins, and just another practical matter along that line, we had in 1937 some very important water legislation passed, and among other things we had a situation where if Denver or the eastern plains wanted to indulge in any trans-mountain diversion, compensatory reservoirs should be set up on the other side of the mountains so as to equalize water fall and provide for storage.

Q. Now, does this relate—

A. I am going to come back to something else in a minute, but I want to mention something just here. Your apportionment cannot look to any particular area, but to the welfare and well-being of the entire state. Yet, legislators individually do not represent the entire state. They represent their own constituency and own individual district. It is only collectively that the legislature represents the State of Colorado.

If we were to put this state without any checks or balances in the situation where we would take one representative for every twenty-seven thousand or twenty-eight thousand and one senator for every forty or fifty thousand, and simply take population as the sole basis, we would get a legislature which in the interest of constituents the majority would vote to repeal the water legislation which has

given benefit to the entire state, which has given rise to the Big Thompson and Arkansas River diversion and others.

Q Now, you feel, in other words, if the Denver Metropolitan Area had a majority of both houses—do you feel that they might repeal that specific legislation?

MR. CREAMER: If it please the Court—

JUDGE BREITENSTEIN: Objection sustained.

THE WITNESS: Shall I continue?

Q With regard to the question which you testified to previously as to factors, and you mentioned home rule cities, would you please explain that a little further, Mr. Little? I believe you were actually getting into that question when we recessed.

MR. CREAMER: If it please the Court, there is nothing to explain. There is a table of home rule cities. It lists twenty-five of them. It lists their population. It has an asterisk in front of some of them. It has an explanation relative to the asterisk. These are cities in the metropolitan areas and it totals them separately.

JUDGE BREITENSTEIN: They are entitled to have an explanation of their exhibit and have the witness testify and submit it. Overruled. Go ahead.

A Colorado is unique in one respect. I don't know of any other state that has an area like the City and County of Denver, and certainly few states which have the home rule amendment, like we have in the 20th Amendment.

The result is the state legislature, while it is the sole body for the rural areas, nevertheless as far as the home rule cities, much of the legislation which would ordinarily come from the legislature originates not with the legislature for the home rule cities but with the home rule cities themselves.

I don't think it is necessary to explain the rights granted home rule cities under the constitution, but what I want to point out is that the legislature, the General Assembly of the State of Colorado, is not nearly as important to home rule cities with their right of sharing with the state legislature in much domestic legislation as the importance of the state legislature to rural areas.

Q All right, sir, would you please comment as to the division of the Senate under Amendment No. 7 as to the allocation of eight senators to Denver and eight to the surrounding suburban counties?

A Denver has eight senators, and at the present time the three surrounding counties, Adams, Arapahoe, and Jefferson have one each. Because of progress and the growth of this area, situations are occurring which render necessary, vitally necessary, that there must be some balance obtained between those areas, the surrounding counties and Denver.

Last night, I voted in a school election in my school district, and the sole question was the loss of tax revenue due to the fact that the 20th Amendment gives to the City and County of Denver powers which are not shared by any other county or city in the state and which are akin only to those of the state legislature.

In other words, every time the City of Denver annexes a territory, it changes the boundaries, not only of senatorial and representative districts, and it does that apart from any amendment or law we have now except Amendment No. 7, but also congressional, judicial district boundaries, as well as school boundaries, and the less assessed valuation there is in these other counties and the more Denver has.

I don't say that as criticism, but what happens is the three surrounding counties are virtually at the mercy of Denver, which if the situation continues it means those

counties are going to be cut in half and eventually forced out of existence because of financial inability to continue because of Denver's annexation.

Now, Amendment No. 7 attempts to equalize that situation by giving each of the three surrounding counties an additional senator and also Boulder County because of its exceptional growth. For instance, the governor vetoed an annexation bill which would have given the City and County of Denver and possibly some other cities the right to go in and annex and incorporate areas surrounded by the City of Denver.

Q Excuse me, that was unincorporated?

A Yes, sir.

Q Was there any annexing of incorporated areas?

A The annexing of Glendale, yes, sir.

Q Has there been a history of conflict between Denver and surrounding areas?

A That's a continuing thing, yes. I do not like to use the word "conflict". It is just simply—you must say, I guess, conflict. It is a conflict between the growth of Denver and the identity and individuality of these surrounding counties caused primarily by the tremendous population growth in this area.

Q Now, then, was Amendment 7 then passed in your opinion in specific light of this legislative situation between Denver and its surrounding counties?

A That was one of the reasons for it, yes.

JUDGE BREITENSTEIN: I am bothered about the answer to that question. I am more bothered about the question. The question was, was it passed because of this. I can't conceive how you, Mr. Kitchen, or the witness or anybody else can know what was in the back of the minds of the people who voted on Amendment No. 7.

THE WITNESS: May I amend my answer and say that's one of the reasons why it was drafted the way it was?

JUDGE BREITENSTEIN: That's better. As far as I am concerned, I am not going to guess at what any voter had in his mind.

THE WITNESS: Well, I am sorry. I didn't quite appreciate that point.

Q Keeping in mind, I think, you testified at the previous hearing, and generalities as to the other factors involved and the opinion of this court which said that generalities were not sufficient, would you have any comment as to the other factors that you mentioned as a basis for Amendment No. 7?

MR. CREAMER: If it please the Court, this is the sixth, seventh or eighth time this identical question has been asked in this examination. We have tried as a matter of courtesy not to interrupt more than seemed imperative, but we have already got an hour and half in the previous record of this same testimony. We have gone almost word for word with what was stated before, except before it was stated what was going to happen under Amendment No. 7, and now it is stated what has happened. Every question in this transcript is a simple variant of, "Would you please state what other factors you have considered?" Mr. Little has stated factors until we are blue in our respective faces. In any respect, it is unreasonable to repeat the same matter over and over again.

JUDGE BREITENSTEIN: Let's try to avoid repetition.

MR. KITCHEN: Yes, I am asking the witness if he can give us any other factors with relation to these factors and not repeat the general statement that was introduced before.

A Well, that would—I don't quite understand, but

if it is proper to put it this way, I think any apportionment measure should take into consideration the fact that the legislature as a whole represents the State of Colorado and every activity connected with it. .

For instance, it should, if the legislature is to be well formed and well rounded, it should have not only expert but practical experience. It should number among its members not only experts but also those who have practical experience in such matters as water, agriculture, stock raising, the tourist industry, lumbering, mining and all the other various pursuits that go on in the State of Colorado.

If we were to look at this thing entirely on the basis of population alone, we might overlook the fact that some of these other basic industries that exist in the far corners of the state and on which these populous centers depend might suffer to the detriment of the entire state.

Q All right, sir, now, finally, with regard to these factors which you have mentioned, would you please state how these matters were brought to the attention of the people of the State of Colorado and the passage of Amendment No. 7?

MR. CREAMER: I do object to this. There is certainly no propriety for rehashing the campaign which was given by Mr. Little and his corporation to get Amendment No. 7 passed. It is an interesting public performance, but it is not pertinent.

MR. KITCHEN: Your Honor, if I may, we have some law on that subject.

JUDGE BREITENSTEIN: Just wait a minute, Mr. Kitchen, we can't conduct a campaign for Number 7, for or against it. We have been very lax in the reception of evidence here, much testimony, and we are willing to hear this, but we don't want another speech from the witness. This matter can be argued at the proper time. If you

have some facts, we would like to have those facts, and again I suggest that we cannot enter the minds of the voters and decide why they voted for or against it, so if you confine your questions to facts, we will hear it, and I do hope repetition can be avoided. Go ahead.

MR. KITCHEN: Well, Your Honor, I should like to state this is the purpose of the question. There was—

JUDGE BREITENSTEIN: Go ahead and ask your question and then we will have a ruling.

MR. KITCHEN: All right.

Q (By Mr. Kitchen) Mr. Little, were these factors which you have mentioned brought to the attention of the people of the State of Colorado during the fall of 1962 in connection with their consideration of Amendment No. 7?

A Yes.

Q And would you please state the nature of this information very briefly?

A Well, the matters I have testified to, the factors why 7 should be adopted, were particularly given the most widespread publicity. Public meetings, radio, television, newspapers, publications, advertising and the like, and also the reason why Number 8 should be defeated, which was the opposing measure.

Q Now, in your political experience in this state, how did this initiated campaign compare as to information to the public and public awareness with others?

MR. CREAMER: If it please the Court—

JUDGE BREITENSTEIN: Objection sustained. You don't need to pursue that any further. The objection is sustained.

MR. KITCHEN: Nothing further. Thank you.

CROSS-EXAMINATION

BY MR. CREAMER:

Q Mr. Little, the redoubtable Amendment No. 7 in essence states as to the House of Representatives that it shall be divided into 65 districts as nearly equal to population as may be, is that correct?

A That's my recollection of it, yes.

Q I think that's approximately the language of it.

A Yes.

Q And there isn't any factor in the House of Representatives at all except population set up as a criterion, is there?

A Yes, that is nearly equal population. That qualifying phrase, "as may be", would cover most of the things I am talking about here.

Q You mean your phrase, "as may be," allows a complete juggling of population?

A Not necessarily. There has to be a reasonable basis for the variances. I wouldn't call it juggling.

Q And then your Senate formula just takes the 1953 act, which we have already considered in its validity, and clamps that in as a congressional provision, just referring to it by statute, book and page, and adds four senators and shifts one county, is that correct?

A That's correct.

MR. KITCHEN: I ask the examination along that line be limited. The Court can see what's in the amendment.

MR. CREAMER: You didn't limit anything.

JUDGE BREITENSTEIN: Just a minute, the objection is overruled. I don't want one lawyer interrupting another any more when one is speaking. Go ahead.

Q Now, with relation to the Senate, you took 3 senators and gave 1 to Adams, 1 to Jefferson and 1 to Arapahoe County and then you took another one and put it up in Boulder, and then you froze the Senate perpetually and said these may not be amended, changed or altered by the legislature, is that correct?

A The answer is no.

Q Yes.

A No.

Q The answer is yes?

MR. KITCHEN: I object, Your Honor. The witness answered no.

JUDGE BREITENSTEIN: Now, be still both of you. We are not going to have more of this, two people talking at the same time, and you lawyers might just as well understand it right now, and, Mr. Creamer, we don't want any more arguing with the witness. The witness said no.

MR. CREAMER: The witness is mistaken, if it please the Court.

Q Just a moment, Mr. Little. I will read to you from your amendment and ask you if this is correct. Section 47 said, "The state shall be divided into 39 senatorial districts. The apportionment of senators among the counties shall be the same as now provided by 63613 of the Colorado Revised Statutes, 1953, which shall not be repealed or amended, other than in numbering districts, except that the counties of Cheyenne, Elbert, Kiowa, Kit Carson and Lincoln shall form one district and one additional senator is hereby apportioned to each of the counties of Adams, Arapahoe, Boulder and Jefferson." Now, the legislature does not have the power to amend or repeal, does it?

A That's correct, but on—

Q I asked you, sir, if it had the power to amend or repeal.

A You asked me if it was frozen. I said no, it was not frozen.

Q Mr. Little, I am asking you if under your amendment the legislature has the power—

JUDGE BREITENSTEIN: Mr. Creamer, I think we thoroughly understand the situation, and I suggest you go to another line of questioning.

MR. CREAMER: Very well, Your Honor.

Q Now, Mr. Little, you have stated that the population of the county of Boulder is illusory because you have stated the census includes the student population in Boulder.

A That's correct.

Q The student population in Boulder is, I believe, approximately 12 to 13,000 in 1960, is that correct?

A I'm not familiar, but I would imagine it would be a fairly close figure.

Q And you have the population of the county of Boulder of some 74,254 in Boulder, including that student population, is that correct?

A At the time of the census, that's correct.

Q So, if you take off the population you say should not be considered, then the county of Boulder has some 62,000 persons, is that correct?

A It does, at the time the census was taken.

Q And you gave to those 62,000 persons a representation of two.

A No, at the time this amendment was adopted, the population of Boulder County is greatly increasing, and

we felt apportionment was not only a question of the immediate situation but also could take into consideration any reasonable increases.

Q Mr. Little, the population of Adams County is increasing 199 per cent per decennium, the population of Jefferson 127 per cent, the population of Arapahoe at 117 per cent, the population of Boulder at the rate of 55 per cent. How do you determine that Boulder is to be allowed something to anticipate future growth while you freeze the remainder of the state?

MR. KITCHEN: I will object to the question as not a correct statement of any facts in the record.

MR. CREAMER: On the contrary—

JUDGE BREITENSTEIN: Just a minute. The objection is sustained, not on the ground made, but because it is purely an argumentative question.

MR. CREAMER: Very well, Your Honor, I had thought the freezing of the matter was perhaps not argumentative.

Q Now, Mr. Little, you have made the statement that Boulder's student population justifies apparently the allocation of a senator to Boulder. Colorado Springs, or more accurately, the county of El Paso, has 143,742 persons, but you say some of these are military persons. Therefore, they must be discounted and therefore the representation in El Paso County is 71,000 per senator while in Boulder County it is 37,000 per senator. Why do you make this differentiation in transiency in population if it is a factor?

A You better recheck your figure.

Q I am checking. El Paso has 143,742 persons as per exhibit before this Court. The County of Boulder has 72,254 persons. Dividing 74 by 2 is 37,127, and dividing 143,742, by 2 is 71,000, so we have 71,000 per senator in

El Paso County and 37,000 per senator in Boulder, both of which you say are transient population.

A I think you heard my testimony on direct. I think it was to the effect that El Paso County had a number of installations which reduced its qualified elector population down considerably. El Paso County's number of registered voters, according to Exhibit D, is 56,000 registered.

Q I am not talking about registered voters. I am talking about the population of the county.

MR. KITCHEN: Object. If the witness has an answer, I would think counsel would allow him to finish his answer.

JUDGE BREITENSTEIN: Yes, the witness can finish his answer, Mr. Creamer.

MR. CREAMER: If it please the Court, I wish the witness might be instructed to answer the question. He largely narrates and orates.

JUDGE BREITENSTEIN: You asked a good question. He can give an answer to it. Go ahead, Mr. Little.

A The answer is this, you are deducting only from Boulder County or you are considering only in Boulder County the students of the University of Colorado, whereas in El Paso County you have got to deduct at least—well, you have got to deduct all of the Air Force Academy, the 15,000 personnel there, all of the soldiers at Fort Carson, all of the personnel at Ent Air Force Base and Peterson Field and NORAD, and that's a considerably larger number than the people in Boulder.

Q Why do I have to deduct them?

A Because they are not residents, may not be residents. I can't say they aren't. At the same time I can't say that the students at the University of Colorado are not or some of them, at least, not residents of Boulder, Colorado.

Q You cannot state that any student at the University of Colorado is or is not a resident or any soldier is or is not a resident.

A Any particular one, no.

Q You simply don't know how many are or are not, do you?

A That is correct.

Q There is no legal impediment whatsoever to a soldier having been within the state the proper period of time registering and electing to become a citizen and resident of the State of Colorado?

MR. KITCHEN: I will object to the counsellor asking the witness for a legal opinion.

MR. CREAMER: I thought he was a political expert.

JUDGE BREITENSTEIN: Objection sustained. Go ahead.

Q Is there any objection to a student being registered?

A None whatsoever.

Q Is there any objection to one of the persons at the Academy being registered?

MR. KITCHEN: Objection on the same ground.

JUDGE BREITENSTEIN: Overruled on that. Go ahead.

Q Is there any objection to anybody at the Academy being a registered voter?

A No.

Q Is there any objection to any one of the 15,000 employees?

A If they have a qualification to become a qualified voter and elector of Colorado, that's it.

Q And you do not know if any of these people are or are not or what number?

A Partly, yes, we know it from the number of registered voters in El Paso County.

Q Your table doesn't limit this to persons in the military or employees at the Academy or residents at the Academy?

A I would assume most of them would not be considered qualified voters. Otherwise they would be registered.

Q You will assume this. How do you know whether they did or didn't register?

A I don't know.

Q Very well. Now, Mr. Little, you have testified, I believe, specifically that the county of Las Animas is a large county, larger than some states. It has 19,983 people.

A That's right.

Q It has one representative—I mean one senator and one member of the Senate.

A George, I don't know. Excuse me, Mr. Creamer, I don't know whether it is alone or with another county.

Q Now it constitutes under this apportionment the 23rd Senatorial District.

A All right.

Q The county of Pueblo, immediately to the north, has 118,707 persons. It only has two senators or one for 59,300 persons. Can you tell me upon the basis of all the factors that you have discussed why this relationship of three and one-half to one obtains with relation to these two counties.

A. I have not gone in the historical ground. I can say this, that Las Animas County is one of the southern tier of counties, but a large group, a large portion of minority groups, a substantial group, I mean, of Spanish voters. Also, it covers a large area or territory of ranches, coal operations, railroad center and the like, and I think, taking into consideration its population and language groups and its varied industries, as well as its area, that it can quickly said to be entitled to one senator.

Q How do we determine it is entitled to one senator, Pueblo is entitled to two senators for roughly three and a half times the population?

MR. KITCHEN: Object to the question as an incorrect statement of facts.

JUDGE BREITENSTEIN: He hasn't finished the question. Why don't you let him finish?

MR. KITCHEN: I beg your pardon.

MR. CREAMER: Let's start all over again.

JUDGE BREITENSTEIN: Let's start all over again.

Q (By Mr. Creamer) Mr. Little, Las Animas, you say, with 19,983 persons, is entitled to one senator as compared to Pueblo County with 118,707 persons, having two senators, each of whom represents 59,353. Now, can you state what logical relation there is between 59,000 per senator in Pueblo, immediately to the north, and 18,000 or 19,000 in Las Animas, immediately to the south?

A I gave you one situation on it, Mr. Creamer, that I thought.

Q Yes, you said people speak Spanish.

A I said more than that. I said it contained within it industries. It is a sizable railroad center. It also is a great ranching area and the other thing is a terrifically

large area for any candidate to possibly cover in a campaign.

Q And why does this justify its having three times the representation?

MR. KITCHEN: Objection, Your Honor. It is argumentative with the witness. The witness has answered the question.

JUDGE BREITENSTEIN: Objection sustained.

Q Can you tell me, Mr. Little, why the county of Las Animas with 19,983 persons receives one senator, and the county of Larimer with 53,343 persons, being also a single county, and I believe of some size, receives one senator?

A Well, as I see this chart here again, Mr. Creamer, the county of Las Animas has 11,000. Larimer has 27,000. It is about two to one, or a little better than two to one.

Let me say this, if you are going to go in there and start picking out mathematical difficulties and make those the entire deal on it, then you are not considering any of the other factors that I mentioned in my direct testimony. I don't see any reason for going in there and saying all of them. I think I have covered that situation in my direct testimony. There are a whole lot of factors besides population only.

Q And I am trying to find out how you apply any one of these factors. Can you state any basis, given the fact that there are topographical differences in Colorado, given the fact there are economic differences in Colorado, given the fact that there are social differences in Colorado. Can you state any method where there could be derived in logic or by any formulation the particular distribution of the Senate which is made by Amendment No. 7.

A I think you have answered that question when you are given the facts that there are social differences, given

the fact of topographical differences and other differences, yes. It is justified.

Q Is there any particular reason why this distribution is necessary?

A Mr. Creamer, let me answer your question this way. One of the biggest and most compelling reasons is this, the people of the State of Colorado will not and did not approve it. In 1954, 1956, an amendment was submitted, putting the House and Senate both on population. It was defeated about 359,000 to 150,000. We can talk about all the theoretical differences we want to. This thing has got to be practical and realistic and the most beautiful theory on the ballot is worthless if the people won't vote for it. This is still a democracy. The thing you are arguing for here, the biggest thing I can say, is the people voted against it.

Q Mr. Little, the people favored the 14th Amendment.

A I—

JUDGE BREITENSTEIN: I wish the counsel on both sides and the witness would remember that the purpose of adducing testimony is to get facts, and there will be opportunity afforded to both sides to argue, and I hope we will be able to avoid argument.

Q Mr. Little, is there any way that you can say that the change of any one senator or any more than one senator on the basis on which you say this distribution is made would have been wrong or that the subtraction or addition in any particular district of a senator would be justified?

A Mr. Creamer, I don't know, as I understand your question. I want to say this, I think this entire proceeding concerns trivials. The same six counties that will control the Senate under Amendment No. 7 would control it under

any population basis. The same six counties that would control the House of Representatives, the six most populous counties of this state, control it under 7, the same as under a population basis. The same six counties that control the Senate of this state under Amendment 7 would also control it under a population basis. We can argue. We can discuss minor deviations of one kind or another. Some of those are historical. I don't propose to know some of the historical reasons why some senators were allowed in Las Animas County. I do know at one time Las Animas County was a great coal county. The coal mining industry has suffered. Therefore, the county has suffered in population. Whether it will come back or not, it is a question for economists to decide. There have been reasons why it was done, and as I said, the most compelling is the people of the state of Colorado ratified that in 1933. They ratified it in 1962 again.

JUDGE BREITENSTEIN: From now on, this is going to be understood, we are going to ask simple questions and simple answers. I don't want the counsel making a speech when he asks a question or the witness making a speech when he answers. That must be understood from now on out.

As I said many times, we are going to have plenty of opportunity to argue this case. Now, go ahead.

MR. GINSBERG: If it please Your Honor, I have a suggestion to make. I believe we have had adequate testimony and opinion of experts. We have had their statement that Mr. Cottingham made, Mr. Little made, "It don't make any difference, we are dealing with trivial matters." I think we get down a question of law now, as certainly this Court is best fit to consider.

I think we are wasting time now by a circuitous expression of expert opinion that don't go to the meat of the legal question involved here at all. I concur fully with Your Honor's suggestion, even more, that they be short. My suggestion is that they be curtailed completely.

MR. CREAMER: I would think I concur entirely in the matter. In fact, I think we will not examine Mr. Little at all further.

JUDGE BREITENSTEIN: Very well, any other examination of this witness?

MR. HARTHUNG: We have no questions.

MR. ZARLENGO: No questions, Your Honor.

JUDGE BREITENSTEIN: Mr. Kitchen?

MR. KITCHEN: Nothing further, and thank you very much, Mr. Little.

JUDGE BREITENSTEIN: That's all, Mr. Little. (Whereupon, the testimony of witnesses during this proceeding was concluded.)

REPORTER'S CERTIFICATE

I, Donna G. Spencer, Certified Shorthand Reporter and Official Reporter to this Court, do hereby certify that I was present at and did record in shorthand the proceedings in the foregoing matter; further, that I thereafter reduced that portion of my shorthand notes reflecting the testimony of the witnesses to typewritten form, comprising the foregoing official transcript of testimony;

Further, that the foregoing official transcript of testimony is a true, accurate and complete record of the testimony of the witnesses given during the proceedings set forth.

Dated at Denver, Colorado, this 31st day of May, 1963.

/s/ Donna G. Spencer

Donna G. Spencer

Certified Shorthand Reporter

3. Affidavit of Edwin C. Johnson

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

ARCHIE L. LISCO, et al,

Petitioners,

v.

STEPHEN L. R. McNICHOLS,
etc., et al,

Respondents.

and

WILLIAM E. MYRICK, et al,

Plaintiffs
and
Petitioners,

v.

THE FORTY-THIRD GENERAL
ASSEMBLY OF THE STATE OF
COLORADO, et al,

Respondents
and
Defendants.,

FEDERAL PLAN FOR APPOR-
TIONMENT, INC., et al,

Intervenors.

CONSOLIDATED

Civil Action No. 7501

Civil Action No. 7637

**AFFIDAVIT OF
EDWIN C. JOHNSON.**

CITY AND COUNTY OF DENVER

STATE OF COLORADO

ss.

Comes now EDWIN C. JOHNSON, of lawful age, and
being first duly sworn, upon his oath, deposeth and saith
as follows, to-wit:

I.

I am the same person who appeared as a witness in

these proceedings on the 30th day of July, 1962. May I express my deep gratitude to this Honorable Court for making it possible for me to submit this affidavit.

II.

In this additional statement, I shall endeavor to be specific on matters which were referred to in generalities in my previous testimony. This Honorable Court has said that "reliance on generalities is misplaced when a case must be decided on the basis of specific situations". In harmony with this keen observation, I wish to commend the Attorney General and special counsel for the State upon the specific information developed and supplied through their witnesses. Seldom has so much pertinent and reliable data been presented, as is contained in the comprehensive report of the Denver Research Institute. Nowhere can the details of Colorado history be found to compare to those presented to this Court by the Honorable James Grafton Rogers. I shall make every effort to plow some new ground in my testimony.

III.

With respect to the recent history of apportionment in this state, the people under the Initiative and Referendum, in addition to all levels of state government have generated continuous and intense activity in this area of government following the 1950 Census and not just since the decision in *Baker v. Carr*. This activity and interest resulted primarily from the postwar shift of population into the metropolitan districts. This census report was available officially to the Colorado Legislature for action in 1953. In that year the Colorado General Assembly adopted a reapportionment measure that was strictly in accord with the Colorado constitutional provisions of that date. In 1954 the people of Colorado voted on an apportionment Referendum and rejected it by a vote of 159,188 to 116,695.

It did not carry in a single county. In 1956 the people of this state rejected an initiated amendment proposing to reapportion both houses of the State Legislature on a straight population basis. The vote was 349,195 to 158,204. It lost in every county except Denver and Denver cast 60,733 votes against it. This 1956 amendment, sponsored by a group headed by the Mayor of Denver, is of great significance. The campaign for and against its passage was one of the most bitter of any I have known in my experience of over 40 years in Colorado politics. Prior to this campaign the relationships between persons in the various parts of this state with Denver on apportionment had always been friendly, arising from mutual understanding, agreement and respect. Now, opponents of the 1956 proposal found themselves branded as reactionary tools of the cattle barons and the target of other silly charges. On the other hand, the proponents were characterized as domineering and power-hungry big city bosses. Great antagonisms were created and spread across the state. One result was that gubernatorial candidate Stephen L. R. McNichols stated that one of his first acts, if elected, would be to appoint a Governor's commission to study apportionment, to overcome, if it could, the divisive effects of the 1956 campaign and to recommend a solution which could be supported by the persons in all parts of the state. Upon his election the Governor did appoint such a commission; the results of which are already in evidence. It is noteworthy that the commission did evolve a majority report recommending action along the lines of Amendment 7, while a small hardcore minority held out for substantially the proposal of 1956. The Legislature tried diligently to apportion itself under the impossible provision of the State Constitution of that period. From 1956 to 1962 it had before it in each session numerous reapportionment proposals. However, the Legislature failed to muster sufficient agreement to enact a measure on apportionment or refer a measure to the people for a vote. In my opinion, the chief stumbling blocks

to legislative action were the constitutional inability of the Legislature to solve the problem of districting within multimember counties and the limitation of a total of thirty-five senators imposed by the State Constitution. Thus, it was impossible to shift representation in the Senate to give recognition to the growing suburban counties in the Denver Metropolitan Area without playing havoc with extremely important areas of the state. In my long considered opinion the chief apportionment issue in Colorado has never been urban v. rural. The struggle has been to obtain single member districts on a basis which would balance the forces within the metropolitan districts themselves and between the three metropolitan districts. Whenever in my statement I refer to "metropolitan areas", I am referring to the three metropolitan areas of the state as shown on the maps on page 7-18 of Petitioners' Exhibit 1, which is the United States Census Population Report for 1960 and which described three metropolitan areas, that is, the Denver Area, which includes the City and County of Denver and the counties of Boulder, Adams, Arapahoe and Jefferson, the Colorado Springs Metropolitan Area, which is the County of El Paso, and the Pueblo Metropolitan Area which is the County of Pueblo.

At any rate, when the legislative session of 1962 failed to produce a bill on reapportionment, the people took over once again. During the months of February, March and April of 1962 various state-wide organizations which had been working on this problem, including the Colorado State Chamber of Commerce, the Colorado Education Association, the League of Women Voters of Colorado, the Colorado Cattlemen's Association, the Colorado State Grange, the Colorado Farm Bureau, the Colorado Junior Chamber of Commerce, the Colorado Council of the AFL-CIO, and several others, conducted a series of meetings, conferences

and hearings, attempting to reach agreement on a common proposal. I attended as many of these conferences as possible. The efforts, which were amicable and in good faith, finally broke up along the same lines as the majority and minority reports of the Governor's Advisory Commission of 1958. The result was that two proposals, Amendments 7 and 8, were initiated by the people in 1962. Amendment 8 was almost identical in its effect, if not in details and mechanics of operation, to the proposal of 1956. As the tabulation attached to our Answer shows, Amendment 8 was defeated in every county in the state, the total vote being 311,749 against to 149,822 for. This is strikingly similar to the vote on the 1956 proposal. On the other hand, Amendment 7 carried in every county of the state. It is very unusual in the annals of Colorado politics that any proposal or candidate receive a plurality in each and every county of this diverse state. Especially as to ballot proposals, there is normally a large built-in negative vote. If people do not understand a proposal, they vote "no". I believe that the principal reason for the character of the vote on Amendment 7 is that the issues were very clearly defined, not only by the continuous activities above described from 1953 through 1962, but also in the campaign itself. The proponents of each amendment were highly organized, and they conducted a campaign in every nook and crannie of the state. I myself toured the state as thoroughly as I had ever done in a political campaign, and from early March of 1962 through the election day in November, I averaged not less than a public speech or participation in a debate at least once per working day. Many others on both sides did as well. In addition both proposals were heavily advertised, pro and con, and were the subject of front page editorial treatments by the newspapers of the state. Every communication medium was filled with discussion of this issue for months prior to election day. In short, in these campaigns, the people were intensely interested, fully informed and voted accordingly.

IV.

I would like to say something more about the rational basis for Amendment 7. First of all, a bicameral legislature historically has been preferred by the states. Only Nebraska has a unicameral system. Incidentally, one result in that state has shown that Omaha (Douglas County) and Lincoln (Lancaster County) have held the State of Nebraska to the obsolete property tax as the chief source of revenue for the state. It is my opinion that the bicameral system of the states has been patterned in general upon the system of the United States Government. It begs the question to say that the Federal Congress was originally created by sovereign states. In my entire service in the United States Senate, I represented the people within the senatorial district formed by the boundaries of the State of Colorado and I did not represent the Colorado State Government. United States Senators have been elected directly by the people within state boundaries since the adoption of the 17th Amendment of the Federal Constitution, yet old states have perpetuated and new states have created bicameral legislatures in which, as in Congress, factors other than population were clearly recognized in at least one branch of the legislature. While I understand that the acts of Congress do not bind the courts as to determination of matters under the 14th Amendment, I feel that great weight should be given to the fact that Congress, a co-ordinate branch of government, has recently placed its stamp of approval on the bicameral legislatures of Alaska and Hawaii, both containing senatorial districts with much greater population disparities than those established by Amendment 7. The Admissions Act for Alaska and Hawaii recites that the constitution of each state is "hereby found to be republican in form and in conformity with the Constitution of the United States and the principles of the Declaration of Independence, and is hereby accepted, ratified and confirmed." Thus the people, and

their political branch of government, have clearly and continuously followed a rational, deliberate policy in creating two houses of a legislature, one generally on a population basis and the other on a different basis.

Turning to a more specific application, in Colorado the people have a fairly recent example of the reasons for this policy. When I was a member of the Colorado Legislature in 1925, the Ku Klux Klan had taken over political power in the major portions of the state measured by population. This was mostly an urban movement. By reason of their control of a bare majority of the votes in large counties, the Klan dominated the legislature. I well remember that the House Leader had a small flagpole on his desk down front in the Assembly. When it was erect, his gang all voted "aye", and when it was tipped they voted "no". Their majority in the House was three to one. Had it not been for the fact that senators were elected from districts representing different interests, and had a different approach to state problems, the damage to this state and its future development which the Klan could have inflicted would have been enormous. The effect may well have been disastrous. Now, in the proceedings leading to the formulation and adoption of Amendment 7, this experience and others like it were in the minds of our people. Consequently, they provided for mandatory districting, so that, first, carrying a county by as little as one vote would not result in a mass representation of one point of view, and, second, no one highly organized metropolitan area of the state could dominate both houses of the legislature. It is obvious that if both houses of the legislature were on a straight head count basis, the Denver Metropolitan Area would absolutely dominate the State of Colorado. Under Amendment 7, it can dominate the house only. Under Amendment 7 the metropolitan areas of Denver, Colorado Springs and Pueblo have a majority of both houses, but no one of these three can, by itself, rule or ruin. I think this is a wise and highly rational policy.

V.

Another factor which should be considered on the question of the rationality of Amendment 7 is the correlation between the adoption, in 1902, of Amendment XX, the Home Rule Amendment, to the Colorado Constitution, and the situation of county government since that date. In my opinion it is no accident that county boundaries have not been radically changed since 1913. The effect of the "home rule" amendment was to transfer "sovereignty" with respect to local matters to home rule cities. At present, Colorado contains a whole series of constitutions within a constitution. Specifically, in Denver, where the unique situation exists of a home rule city being also a county, legislative problems have arisen which are, with the possible exception of Honolulu and San Francisco, without parallel in American government. Just a few weeks ago, in the 1963 session of the Colorado Legislature, the hottest and most prolonged issue was created by the two bills seeking to authorize Denver and other home rule cities to annex contiguous unincorporated and incorporated areas without the consent of the persons resident within those areas. Again, the fight was not urban v. rural but Denver v. its suburbs. Had these bills become effective, any areas annexed by Denver would not only become a part of the city, but the residents would have been transferred automatically to a different congressional district, a different school district, and different legislative districts without their consent. Incidentally, only one of the bills passed, and it was vetoed by the Governor, who, of course, is elected by the people on a straight population majority basis. This intramural fight, particularly between Denver and its suburbs, has been going on in the Colorado Legislature for years and years, and the People by adopting Amendment 7 assigned eight senators to Denver and a total of eight to the suburban counties of Boulder, Adams, Arapahoe and Jefferson for the particular purpose of balancing the inter-

ests of this home rule City and County with those of its suburbs. That was a wise and rational policy for the voters to adopt.

VI.

Again, as to the suburban counties surrounding Denver, Amendment 7 solved the impasse which had troubled the legislature by increasing the number of senators from thirty-five to thirty-nine and assigning the four thus created to the suburban counties. This had the overall effect, on the urban v. rural issue, of eliminating any major population deviation in the house and, in addition, creating a disproportion in the senate of less than two to one. At the same time, this weighting in favor of the sparsely populated areas is not based on an arbitrary mathematical formula, but is founded on legislative experience, fair play and common sense. A specific example of the importance of weighting in favor of the sparsely populated areas is the water legislation previously referred to in his testimony by Mr. Little. Because of its vital importance in this semi-desert state I wish to mention it again. I was in the United States Senate when the Colorado Legislature passed the water acts of 1937 according to plans which were developed when I was Governor of the State of Colorado in 1936. The Colorado Big Thompson Project and the compensating reservoir theory depended upon the support of Congressman Edward T. Taylor of Glenwood Springs, a former State Senator. Had it not been for the fact that the representative from Colorado's rural areas, particularly the Western Slope, had sufficient power in the Colorado Legislature to obtain compensatory storage in all cases of transmountain diversion, there would have been no Big Thompson Project. It is naive and dangerously wrong to assume that representatives from populous areas will vote funds or support legislation for the development of areas outside their own, except under most unusual circumstances.

Colorado has many undeveloped areas and many areas of past booms in which new developments will occur. For example, in Senate District 6 the counties involved are front range counties which have a long mining history, which has recently been in decline. But any substantial change in technology or in price of any of a number of precious or rare metals or minerals, could change this situation overnight. The changes being made by the Federal Government currently in the structure and price of the silver market, have already had an encouraging effect. The metal uranium was a well known metal prior to 1945, but the change in technology created a major boom in Western Colorado. A similar change with regard to metals known to exist within Senate District 6 could have a deep influence upon the development of this state. It has not been pointed out that during the depression years of the 1930's Senate District 6 was one of the mainstays of a stable economy within the State of Colorado, because of the relative high price of gold. Although the production figures do not reflect a boom in production of gold in this district within that decade, the relative importance of gold production from this district was one of the sustaining influences in this state during that distressing period. The same can be said with regard to many other districts and counties within the State of Colorado. Another example is coal. District 4, Las Animas County, contains vast reserves of coal, and any change of a substantial nature in technology or the market will create a boom overnight in that county. According to current press reports coal is on the threshold of becoming "king" again. That area of the state is also on the threshold of becoming a tourist Mecca for the hot belt states immediately to its southeast and southwest. Another example of a resource on the threshold of development is the vast oil shale deposit underlying the almost entire northwest quadrant of the State of Colorado. I had the pleasure of being a member of a state-wide committee concerning itself with the encouragement of the develop-

ment of this deposit and had occasion to testify on two separate occasions before the House Ways and Means Committee within the last decade as to the potential of this area. It can be said conservatively that within the near future a tremendous economic development of the Grand Valley can be expected with consequential differences in population. The whole point is that the legislature must reflect a membership which will, through the distribution of legislative voices, call attention to the development of these resources of the State of Colorado. I repeat, this problem translates itself into legislative problems. As has already been mentioned in the case of water, if the people of the Denver Metropolitan Area had control of both houses of the legislature, it is unrealistic to expect them to not circumvent the provisions of Colorado Law which require compensatory storage for transmountain diversions. The simple elimination of this provision would emasculate those acts and leave the people of the Western Slope without an effective means of organizing to preserve their water supplies. This would have a direct adverse effect upon the potential development of the Western Slope oil shale reserves. Without an effective rural district voice in the Colorado Legislature, a Colorado "Program for Progress" would be dead.

In previous testimony I have referred to all the matters which a senator from my district from Northwest Colorado must be familiar. While Denver has sent many outstanding and capable men to the legislature, it is not the general rule that these legislators are equipped first to recognize the various problems of rural Colorado and second to deal with them legislatively.

There is no question whatever in my mind that the people of the State of Colorado had these factors in mind when they adopted Amendment 7. I repeat, this is a wise and rational policy.

VII.

Closely related as to what I have just said as to the rationale of the overall apportionment, is the matter of the specific formation of the senatorial districts under Amendment 7. Amendment 7 groups together counties in order to form single member districts, where necessary. It was logical to proceed with the grouping of counties as to senatorial districts because counties in Colorado are, to the people, something more than mere branch offices of the state. The geography of Colorado alone requires it. Colorado, like Alaska, is a huge state. It has fifty-two mountain peaks over 14,000 feet in altitude, while Alaska has but sixteen such peaks. The Colorado Constitution devotes a whole article to County Government; county officers are constitutional officers, not creatures of the legislature; the day by day contact by the citizens with government is their contact with county or city government, not with the state. Legalisms aside, because state government is to them more remote, people in Colorado identify their welfare and their lives with the county, and not with the state. Further, all election procedures are handled by county officers, so that it is not practical or feasible to combine part of one county with another in providing election machinery. So, in forming senatorial districts, the counties were and are the building blocks. From there on the problem has always been to combine counties in forming one district in a manner which will be satisfactory, considering all of the particular factors involved in each case. Witness Rogers has already demonstrated the great amount of experimenting the legislature and the people have done in this regard. A troublesome specific example is the trials and tribulations of Douglas County, which was first combined, and outvoted, by one county or set of counties, then another, and combined with other counties in a geographically impos-

sible district, until finally the present district was formed and some equilibrium established. True, Douglas County has not very much in common with some of the other counties with which it is now combined, but there are some common elements, and the alternatives previously tested or which have since been proposed are worse, much worse.

VIII.

Another factor influencing legislative apportionment is the fact that the General Assembly must meet at the State Capitol in the center of the Denver Metropolitan Area. This is a tremendous practical advantage to the people living in that area. They are able to maintain daily, direct contact with legislation and with the members of the General Assembly. Persons living in more remote areas are unable to have nearly as great an influence on legislation for this reason alone. I have found this to be true both in my experience in the legislature and as Governor. In my opinion this was also a factor in the rationale of Amendment 7.

IX.

Finally, the record will disclose that the people of the State of Colorado have over the years taken a great many things which would otherwise be in the realm of legislative prerogative out of the hands of the General Assembly. Three-fourths of the revenues of the state are earmarked by the Constitution for welfare and road purposes and are not administered by the legislature. This has resulted in the legislature often being referred to as a "two bit" legislature. Moreover, in that great decade of reform from 1900 to 1910 the people took direct and affirmative action to establish and maintain firm control over what remains of legislative action in this state. By the adoption of the Initia-

tive and Referendum Amendments to the Colorado Constitution the ultimate responsibility of apportioning the legislature remains with the people. The authority and the responsibility go together as a team and cannot be separated. Prior to 1910 the General Assembly had the exclusive authority and responsibility to apportion the legislature, but that was completely changed in 1910. This is a tremendously pertinent point in any effort to fix responsibility in this field. Democracy took an important step forward in Colorado in 1910 when this action was taken. Our Colorado Supreme Court has established the fact that the legislature cannot overrule the action of the people in this field. Thus the new legislature remains but the agent of the people who retain the authority to override the action of the legislature or to take original action on any legislative matter, including apportionment. Any action which might be taken by the people would be, of course, by a simple majority vote. Thus, we have in Colorado a structure of government whereby the judicial branch and executive branch are entirely selected by a majority on an equal voter population basis. The third branch of government, the legislative branch, is by Amendment 7 placed upon a strict voter population basis in the House of Representatives and on a basis in the Senate whereby a majority of the voters in Colorado still control, although area factors were definitely considered in the formation of the senate districts and apportionment. Nevertheless the liberal Initiative and Referendum provisions of the Colorado Constitution make it possible for the people, by a straight majority vote on an equal voter population basis, to override or initiate any legislation in any general election, at their will. Thus in the overall scheme of things, the area representation now provided in the Senate by Amendment 7 is not a controlling factor in the setting of future policies of the state. However, it does provide a powerful forum whose voice is

echoed from every hill and valley in this beautiful state.
It provides a just and rational solution of the problem of
apportionment in Colorado.

Further deponent saith not:

/s/ Edwin C. Johnson
Edwin C. Johnson

Subscribed and sworn to before me this..... day of
June, 1963.

My commission expires:

.....
Notary Public

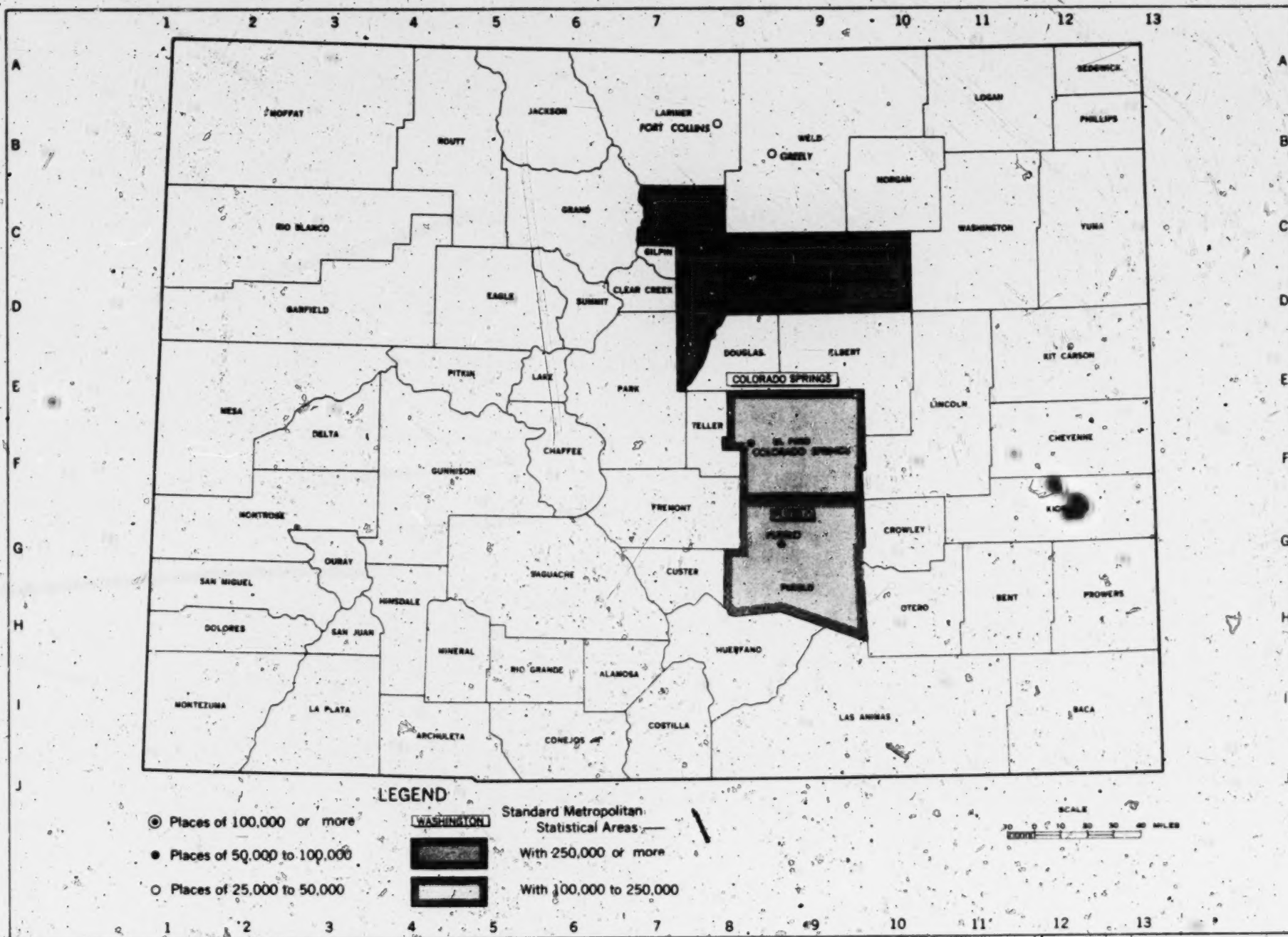
4. PAGE 7-2 (SAME AS PAGE 7-18) OF PLAINTIFFS

EXHIBIT 1

COLORADO — COUNTIES, PLACES OF 25,000 OR MORE, AND STANDARD METROPOLITAN STATISTICAL AREAS

7-2


4. Page 7.2 of Plaintiffs' Exhibit 1



DEFENDANTS' EXHIBITS E, E1, E2,

E3, E4, E5 AND E6

1881 Apportionment—Senatorial Districts

Key: A solid black line () enclosing a county or counties denotes a senatorial district. Additional overlapping districts are identified by crossed lines or by dots.

Thus: 1. Arapahoe County constituted a district.

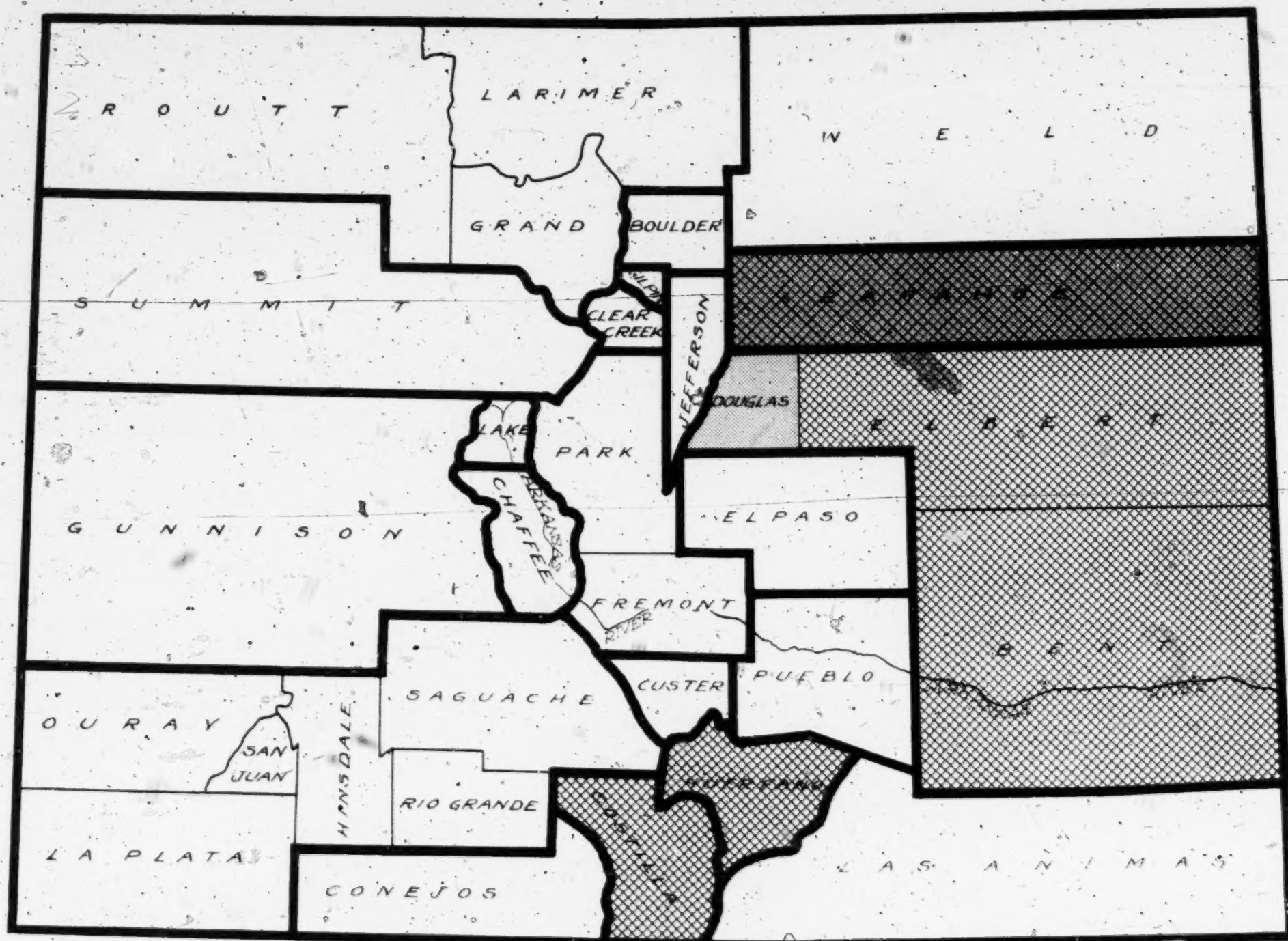
2. Arapahoe and Douglas Counties constituted an overlapping district.

3. Arapahoe, Elbert and Bent Counties constituted an overlapping district.


4. Huerfano and Costilla Counties constituted a district. (The map incorrectly shows Huerfano and Costilla Counties as separate districts.)

Each regular and each overlapping district was entitled to elect one senator except for Arapahoe County which elected four senators and Lake County which elected three senators.

COLORADO SENATE - 1881 APPORTIONMENT



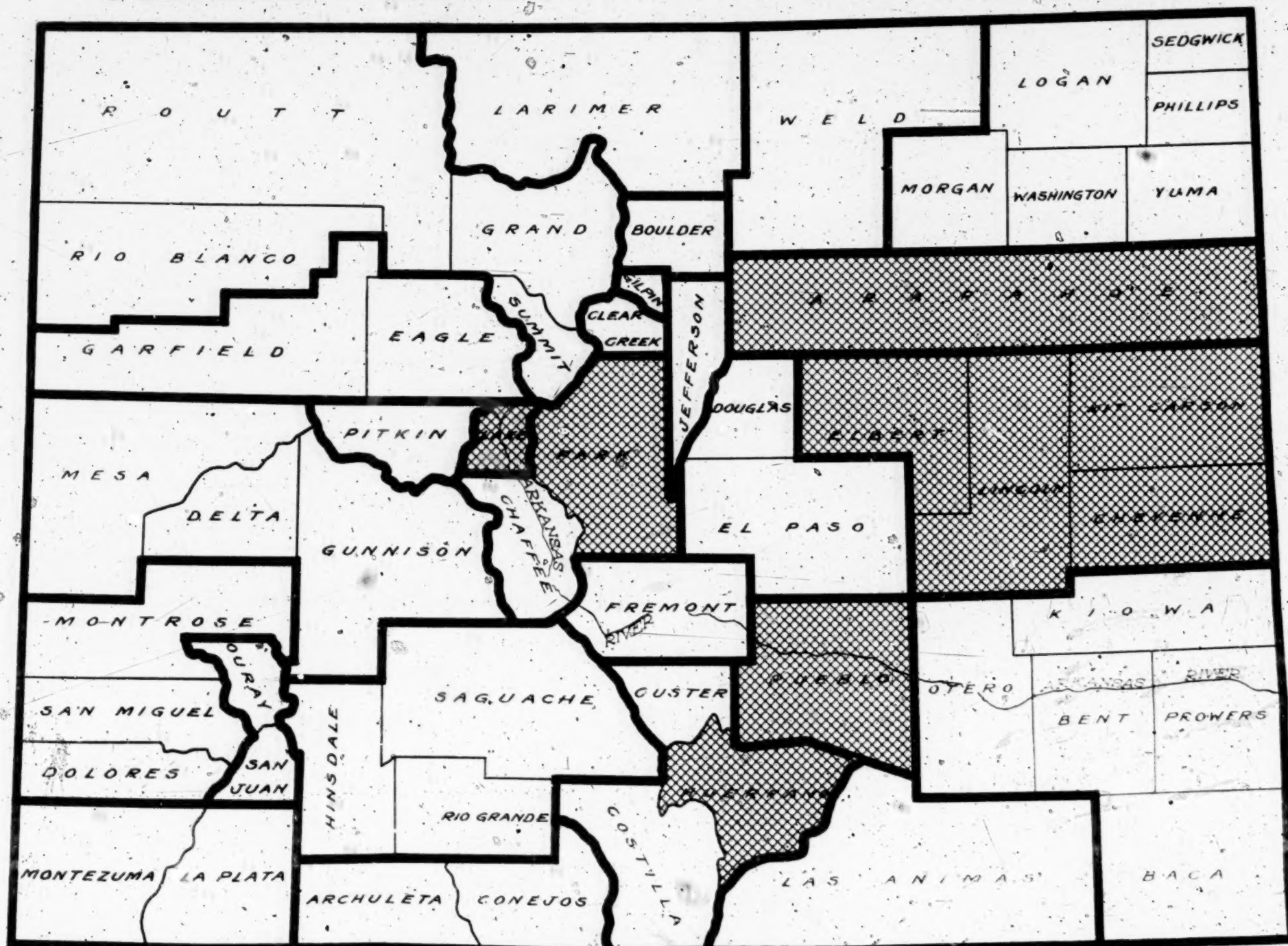
1891 Apportionment—Senatorial Districts

Key: A solid black line () enclosing a county or counties denotes a senatorial district. Additional overlapping districts are identified by crossed lines.

- Thus:
1. Lake County constituted a district;
 2. Lake and Park Counties constituted an overlapping district;
 3. Arapahoe County constituted a district;
 4. Arapahoe, Cheyenne, Kit Carson, Lincoln and Elbert Counties constituted an overlapping district;
 5. Pueblo County constituted a district; and
 6. Pueblo and Huerfano constituted an overlapping district.

Each regular and each overlapping district was entitled to elect one senator, except for Arapahoe County which elected six senators, Pueblo County which elected two senators and Douglas and El Paso Counties which together elected two senators.

COLORADO SENATE - 1891 APPORTIONMENT



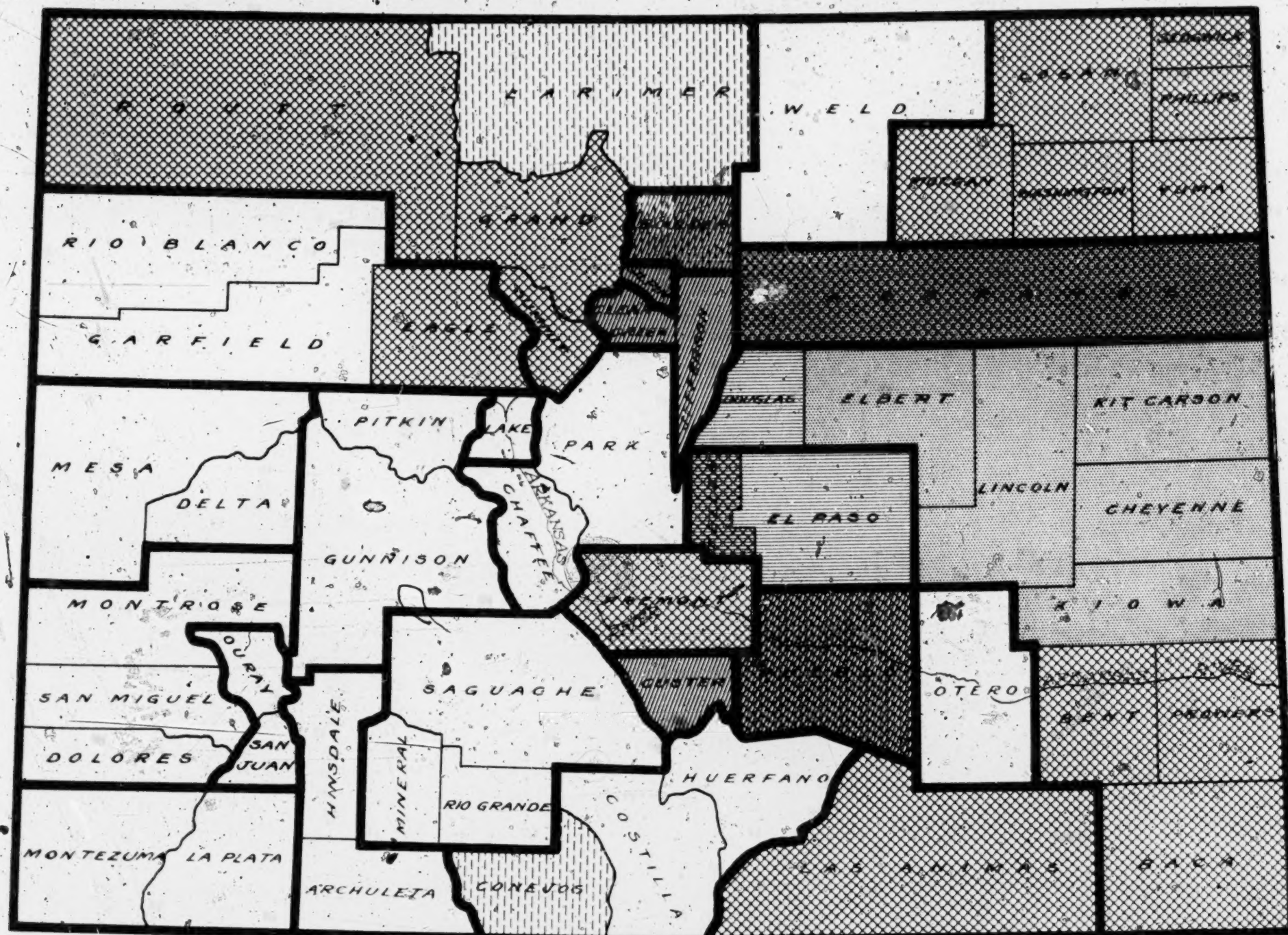
1901 Apportionment—Senatorial Districts

Key: A solid black line (—) enclosing a county or counties denotes a senatorial district. Additional overlapping districts are identified by crossed lines, vertical broken lines, dots, horizontal lines and slanting lines.

- Thus:**
1. Arapahoe County constituted a district.
 2. Arapahoe, Elbert, Lincoln, Kit Carson, Cheyenne and Kiowa Counties constituted an overlapping district.
 3. Arapahoe, Morgan, Washington, Yuma, Phillips, Logan and Sedgwick Counties constituted an overlapping district.
 4. Teller, Douglas, and El Paso Counties constituted an overlapping district.
 5. Pueblo County constituted a district.
 6. Pueblo and Custer Counties constituted an overlapping district.
 7. Pueblo, Fremont and Teller Counties constituted an overlapping district.
 8. Boulder County constituted a district.
 9. Boulder and Larimer Counties constituted an overlapping district.
 10. Boulder, Gilpin, Jefferson and Clear Creek Counties constituted an overlapping district.
 11. Conejos County constituted an overlapping district.
 12. Las Animas County constituted a district.
 13. Las Animas, Bent, Prowers and Baca Counties constituted an overlapping district.
 14. Routt, Eagle, Grand and Summit Counties constituted an overlapping district.

Each regular and each overlapping district was entitled to elect one senator, except for Arapahoe County which elected six senators and El Paso and Teller Counties which together elected two senators.

COLORADO SENATE - 1901 APPORTIONMENT



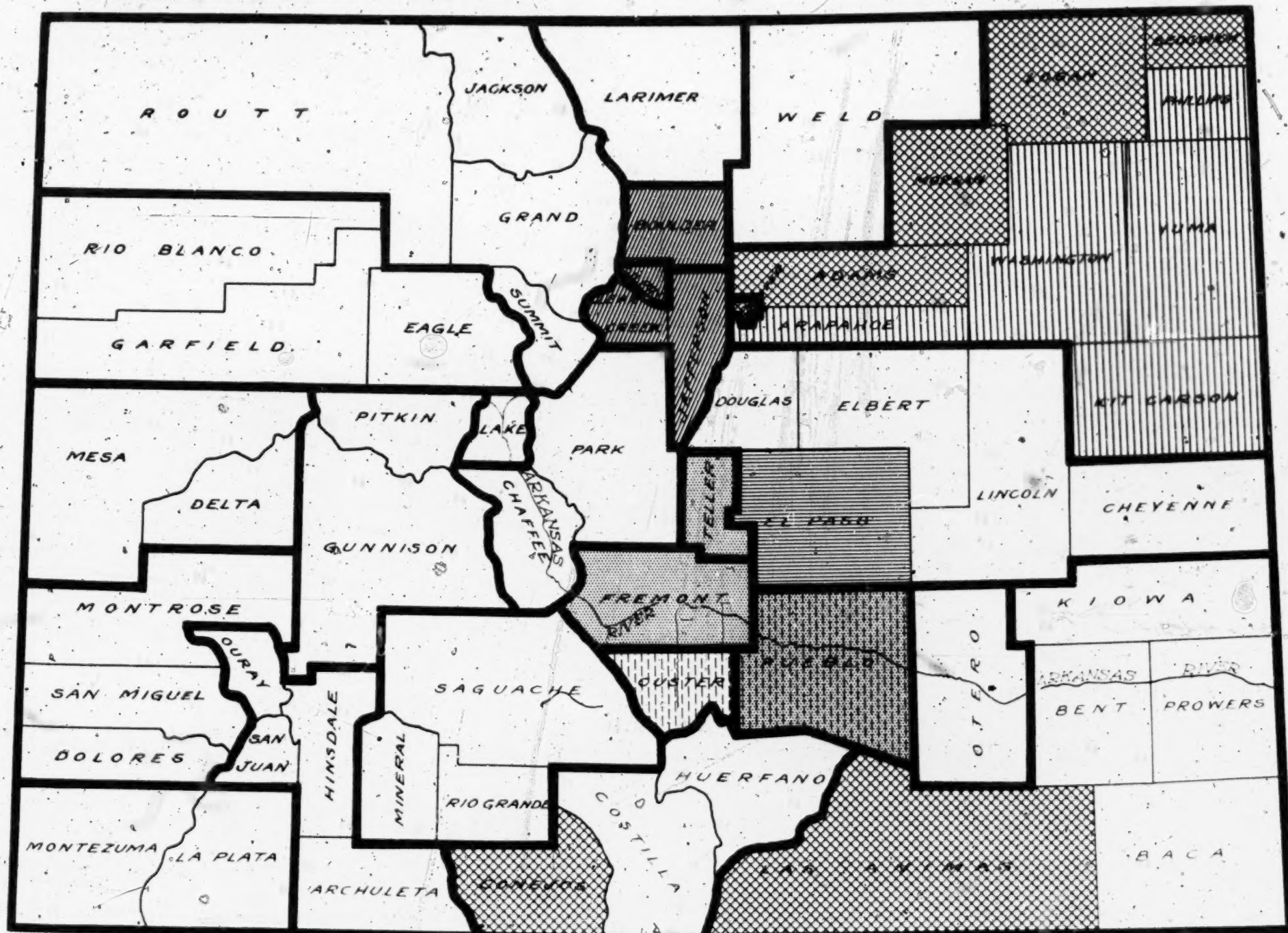
1909 Apportionment—Senatorial Districts

Key: A solid black line (—) enclosing a county or counties denotes a senatorial district. Additional overlapping districts are identified by crossed lines, dots, broken vertical lines, vertical lines and slanting lines.

- Thus:
1. Denver County constituted a district;
 2. Denver, Adams, Morgan, Logan and Sedgwick Counties constituted an overlapping district;
 3. Denver, Arapahoe, Washington, Kit Carson, Yuma and Phillips Counties constituted an overlapping district;
 4. Boulder, Gilpin, Clear Creek and Jefferson Counties constituted an overlapping district;
 5. Pueblo, Fremont and Teller Counties constituted an overlapping district;
 6. Pueblo and Custer Counties constituted an overlapping district;
 7. Conejos County constituted an overlapping district;
 8. Las Animas County constituted an overlapping district; and
 9. El Paso County constituted an overlapping district.

Each regular and each overlapping district was entitled to elect one senator excepting the City and County of Denver, which was entitled to elect six senators.

COLORADO SENATE - 1909 APPORTIONMENT

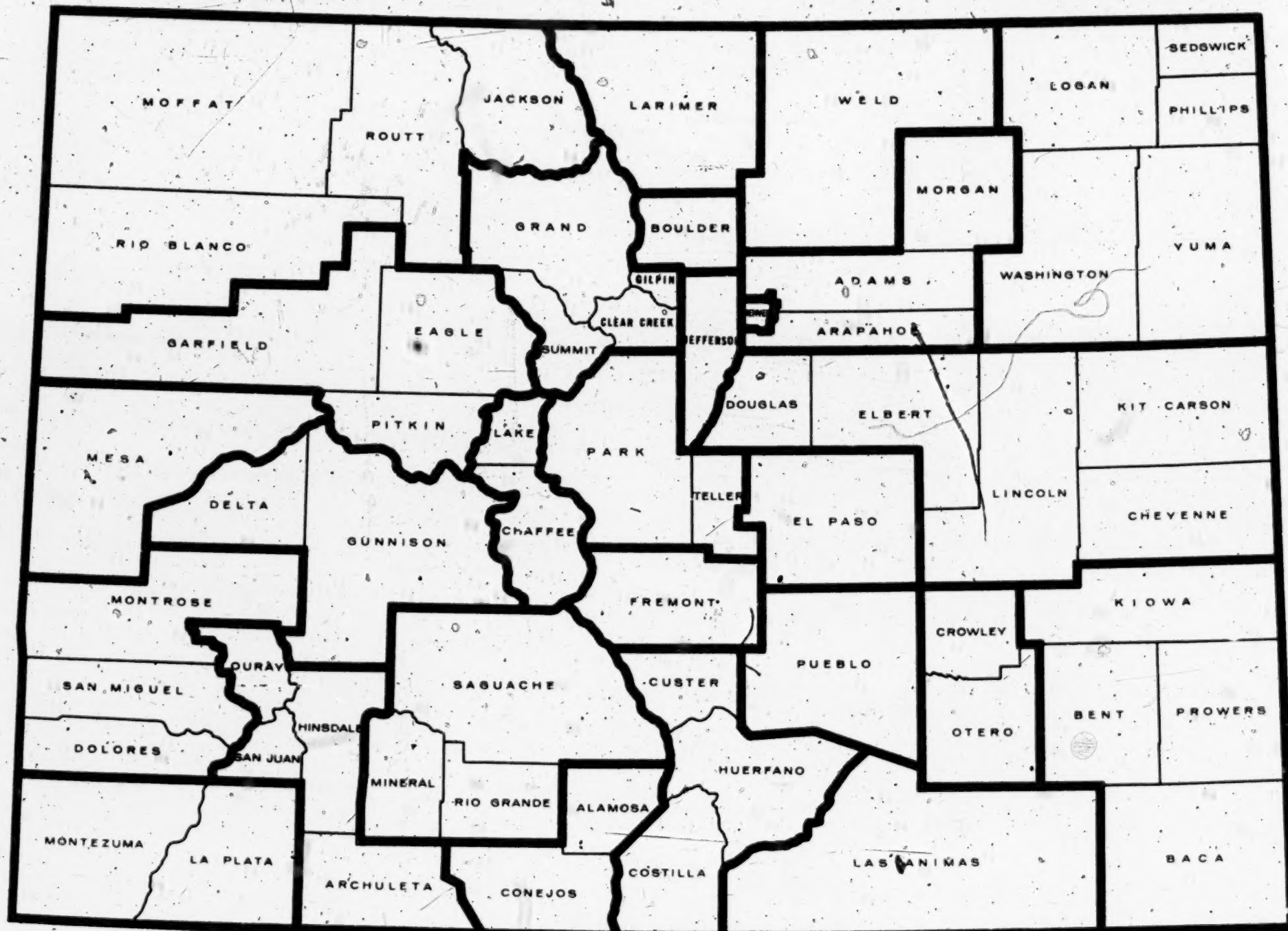


1913 Apportionment—Senatorial Districts

Key: Each senatorial district is enclosed within a heavy black line (———).

Each senatorial district was entitled to elect one senator except for the City and County of Denver which elected seven senators and the Counties of Pueblo and El Paso, each of which elected two senators.

COLORADO SENATE - 1913 APPORTIONMENT

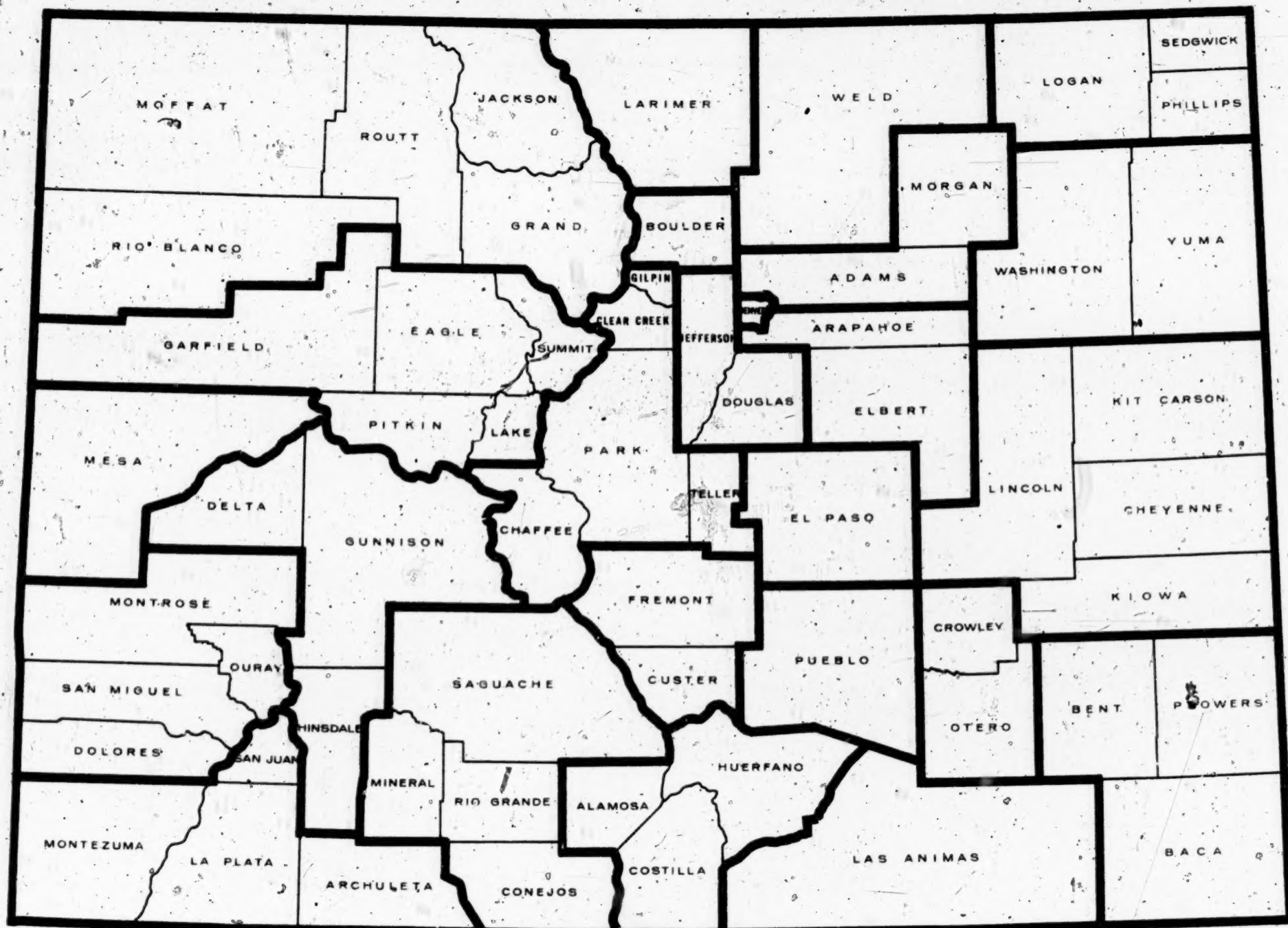


1932 Apportionment—Senatorial Districts

Key: Each senatorial district is enclosed within a heavy black line (**_____**).

Each senatorial district was entitled to elect one senator except for the City and County of Denver which elected eight senators and the Counties of Pueblo and El Paso and Weld, each of which elected two senators.

COLORADO SENATE - 1932 APPORTIONMENT

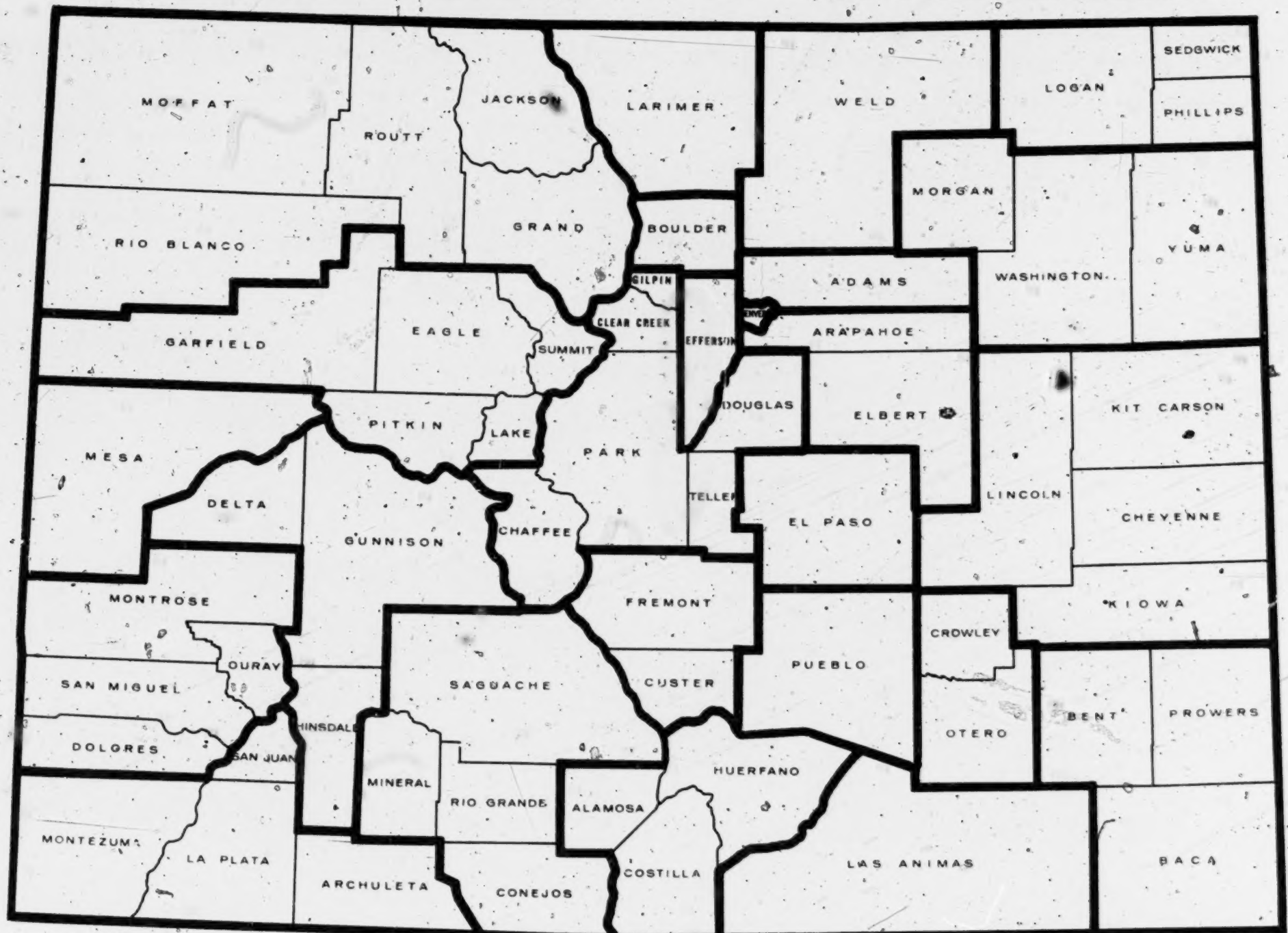


1953 Apportionment—Senatorial Districts

Key: Each senatorial district is enclosed within a heavy black line ().

Each senatorial district was entitled to elect one senator except for the City and County of Denver which elected eight senators and the Counties of Pueblo, El Paso and Weld, each of which elected two senators.

COLORADO SENATE - 1953 APPORTIONMENT



6. INTERVENORS' EXHIBITS

INTERVENORS' EXHIBIT B. REAPPORTIONMENT OF THE SENATE AS ENACTED BY AMENDMENT #7

District	Counties	Square Miles	Population	Sen- ators	Population per Senator
1st	Denver	73	493,887	8	61,736
2nd	Pueblo	2,414	118,707	2	59,353
3rd	El Paso	2,159	143,742	2	71,871
4th	Las Animas	4,798	19,983	1	19,983
5th	Boulder	758	74,254	2	37,127
6th	Chaffee	1,040	8,298	1	20,909
	Park	2,178	1,822		
	Gilpin	149	685		
	Clear Creek	395	2,793		
	Douglas	833	4,816		
	Teller	555	2,495		
7th	Weld	4,033	72,344	2	36,172
8th	Jefferson	791	127,520	2	63,760
9th	Fremont	1,562	20,196	1	21,501
	Custer	738	1,305		
10th	Larimer	2,640	53,343	1	53,343
11th	Delta	1,161	15,602	1	21,287
	Gunnison	3,243	5,477		
	Hinsdale	1,062	208		
12th	Logan	1,849	20,302	1	28,984
	Sedgwick	554	4,242		
	Phillips	680	4,440		
13th	Rio Blanco	3,264	5,150	1	23,426
	Moffat	4,761	7,061		
	Routt	2,331	5,900		
	Jackson	1,628	1,758		
	Grand	1,869	3,557		
14th	Huerfano	1,580	7,867	1	22,086
	Costilla	1,220	4,219		
	Alamosa	723	10,000		
15th	Saguache	3,146	4,473	1	24,485
	Mineral	923	424		
	Rio Grande	916	11,160		
	Conejos	1,274	8,428		
16th	Mesa	3,334	50,715	1	50,715
17th	Montrose	2,240	18,286	1	25,027
	Ouray	540	1,601		
	San Miguel	1,284	2,944		
	Dolores	1,029	2,196		

INTERVENORS' EXHIBIT B (Continued)
REAPPORTIONMENT OF THE SENATE AS ENACTED
BY AMENDMENT #7

<u>District</u>	<u>Counties</u>	<u>Square Miles</u>	<u>Population</u>	<u>Sen- ators</u>	<u>Population per Senator</u>
18th	Kit Carson	2,171	6,957	1	21,189
	Cheyenne	1,772	2,789		
	Lincoln	2,593	5,310		
	Kiowa	1,794	2,425		
	Elbert	1,864	3,708		
19th	San Juan	392	849	1	36,727
	Montezuma	2,097	14,024		
	La Plata	1,691	19,225		
	Archuleta	1,364	2,629		
20th	Yuma	2,383	8,912	1	36,729
	Washington	2,530	6,625		
	Morgan	1,300	21,192		
21st	Garfield	3,000	12,017	1	28,249
	Summit	616	2,073		
	Eagle	1,636	4,677		
	Lake	384	7,101		
	Pitkin	975	2,381		
22nd	Arapahoe	815	113,426	2	56,713
23rd	Otero	1,276	24,128	1	28,106
	Crowley	812	3,978		
24th	Adams	1,250	120,296	2	60,148
25th	Bent	1,543	7,419	1	27,025
	Prowers	1,636	13,296		
	Baca	2,565	6,310		
		<u>104,247</u>	<u>1,753,947</u>	<u>39</u>	

EXHIBIT C

**VOTING RESULTS ON AMENDMENTS 7 AND 8
AS REPORTED BY THE OFFICE OF THE
SECRETARY OF THE STATE OF COLORADO
ON DECEMBER 7, 1962**

**(#7 PASSED IN EACH COUNTY AND
#8 DEFEATED IN EACH COUNTY)**

COUNTY	AMENDMENT 7		AMENDMENT 8	
	For	Against	For	Against
Adams	14,740	10,771	11,277	13,843
Alamosa	1,524	1,015	454	2,024
Arapahoe	18,193	12,351	13,576	16,446
Archuleta	513	141	186	541
Baca	1,507	382	146	1,628
Bent	1,973	378	135	1,990
Boulder	12,654	9,636	8,524	13,311
Chaffee	1,905	747	388	2,065
Cheyenne	1,054	128	85	1,050
Clear Creek	807	392	278	860
Conejos	1,916	365	262	1,737
Costilla	431	173	159	355
Crowley	1,027	234	140	1,057
Custer	584	80	48	582
Delta	4,559	932	443	4,794
Denver	75,877	61,183	55,499	76,208
Dolores	379	137	58	438

EXHIBIT C (Continued)

COUNTY	AMENDMENT 7		AMENDMENT 8	
	For	Against	For	Against
Douglas	1,334	442	304	1,375
Eagle	1,162	357	220	1,231
Elbert	1,360	243	120	1,378
El Paso	17,480	11,509	9,175	19,058
Fremont	5,147	1,476	731	5,564
Garfield	3,410	714	333	3,521
Gilpin	356	100	88	332
Grand	1,087	218	156	1,076
Gunnison	1,365	401	255	1,455
Hinsdale	114	26	18	107
Huerfano	1,667	582	380	1,633
Jackson	616	87	44	615
Jefferson	24,815	17,597	20,229	21,217
Kiowa	955	220	94	1,049
Kit Carson	2,171	367	218	2,220
Lake	1,389	505	438	1,436
La Plata	3,927	1,723	1,345	4,014
Larimer	10,729	4,251	3,530	10,804
Las Animas	3,947	1,278	767	3,742
Lincoln	1,709	312	160	1,792
Logan	4,934	977	576	5,147
Mesa	12,216	3,302	2,509	12,522
Mineral	117	87	28	169

EXHIBIT C (Continued)

COUNTY	AMENDMENT 7		AMENDMENT 8	
	For	Against	For	Against
Moffat	2,060	406	252	2,129
Montezuma	2,408	610	433	2,475
Montrose	4,135	591	347	4,594
Morgan	4,242	1,490	750	4,754
Otero	4,862	1,826	941	5,424
Ouray	562	106	65	575
Park	626	162	87	635
Phillips	1,679	292	138	1,743
Pitkin	576	240	216	471
Prowers	3,090	1,043	536	3,427
Pueblo	14,591	11,555	7,930	17,820
Rio Blanco	1,427	311	221	1,452
Rio Grande	2,089	706	336	2,333
Routt	1,774	455	251	1,878
Saguache	1,035	310	151	1,066
San Juan	280	51	36	273
San Miguel	551	183	105	590
Sedgwick	1,454	145	117	1,378
Summit	406	129	95	417
Teller	599	307	164	701
Washington	1,792	430	149	1,988
Weld	10,914	5,017	2,871	12,217
Yuma	2,898	541	255	3,022
	305,700	172,725	149,822	311,749

INTERVENORS' EXHIBIT D

Percentage of Registered Voters to Total Population
(by County)

<u>County</u>	<u>No. Reg. Voters</u>	<u>Total Pop.</u>	<u>Percent</u>
Adams	51,204	120,296	42.5650
Alamosa	3,923	10,000	39.2300
Arapahoe	54,379	113,426	47.9422
Archuleta	1,393	2,629	52.9859
Baca	3,235	6,310	51.2678
Bent	3,572	7,419	48.1466
Boulder	39,699	74,254	53.4638
Chaffee	4,684	8,298	56.4474
Cheyenne	1,616	2,789	57.9419
Clear Creek	2,025	2,793	72.5027
Conejos	4,494	8,428	53.3222
Costilla	2,515	4,219	59.6112
Crowley	2,209	3,978	55.5304
Custer	963	1,305	73.7931
Delta	8,866	15,602	56.8260
Denver	259,039	493,887	52.2261
Dolores	1,037	2,196	47.2222
Douglas	2,871	4,816	59.6137
Eagle	2,451	4,677	52.4053
Elbert	2,320	3,708	62.5674
El Paso	56,501	143,742	39.3073
Fremont	10,764	20,196	53.2976
Garfield	6,544	12,017	54.4562
Gilpin	720	685	105.1094
Grand	2,128	3,557	59.8257
Gunnison	2,922	5,477	51.5063
Hinsdale	280	208	133.6538
Huerfano	4,902	7,867	62.3109
Jackson	1,065	1,758	60.5802
Jefferson	74,840	127,520	58.6888
Kiowa	1,684	2,425	69.4433
Kit Carson	3,863	6,957	55.5268

INTERVENORS' EXHIBIT D (Continued)

County	No. Reg. Voters	Total Pop.	Percent
Lake	3,526	7,101	49.6549
La Plata	9,992	19,225	51.9739
Larimer	27,246	53,343	51.0769
Las Animas	11,654	19,983	58.3195
Lincoln	3,026	5,310	56.9868
Logan	9,450	20,302	46.5471
Mesa	25,044	50,715	49.3818
Mineral	354	424	83.4906
Moffat	3,648	7,061	51.6647
Montezuma	5,874	14,024	41.8853
Montrose	8,052	18,286	43.4922
Morgan	9,451	21,192	44.5970
Otero	12,126	24,128	50.2569
Ouray	1,135	1,601	70.8932
Park	1,344	1,822	73.7650
Phillips	2,717	4,440	61.1937
Pitkin	1,493	2,381	62.7043
Prowers	6,802	13,296	51.1657
Pueblo	55,185	118,707	46.4875
Rio Blanco	2,661	5,150	51.6699
Rio Grande	5,111	11,160	45.7966
Routt	3,675	5,900	62.2881
Saguache	2,253	4,473	50.5947
San Juan	587	849	69.1402
San Miguel	1,288	2,944	43.7500
Sedgwick	2,316	4,242	54.5968
Summit	1,169	2,073	56.3912
Teller	1,690	2,495	67.7310
Washington	3,452	6,625	52.1057
Weld	32,897	72,344	45.4730
Yuma	5,150	8,912	57.7872
	879,075	1,753,947	50.1

INTERVENORS' EXHIBIT E
COLORADO HOME RULE CITIES AND THEIR
POPULATIONS

Alamosa	6,205.
Arvada	19,242*
Aurora	48,548*
Boulder	37,718*
Canon City	8,973
Colorado Springs	70,194*
Cortez	6,764
Craig	3,984
Delta	3,832
Denver	493,887*
Durango	10,530
Englewood	33,398*
Fort Collins	25,027
Fort Morgan	7,379
Grand Junction	18,694
Greeley	26,314
Lafayette	2,612
Littleton	13,670*
Longmont	11,489
Monte Vista	3,385
Montrose	5,044
Pueblo	91,181*
Sterling	10,751
Westminster	13,850
Wray	2,082
	<hr/>
	974,753

* Population of Home Rule Cities in
"Metropolitan Areas"

807,838

**7. MAJORITY OPINION OF UNITED STATES
DISTRICT COURT**

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

ARCHIE L. LISCO, and all other registered voters
of the Denver Metropolitan Area, State of Colo-
rado, similarly situated,

Plaintiffs,

v.

JOHN LOVE, as Governor of the State of Colo-
rado, HOMER BEDFORD, as Treasurer of the
State of Colorado, Byron Anderson, as Sec-
retary of the State of Colorado, THE STATE
OF COLORADO and THE FORTY-FOURTH GEN-
ERAL ASSEMBLY THEREOF,

Defendants.

Civil Action

No. 7501

WILLIAM E. MYRICK, JOHN CHRISTENSEN, ED
SCOTT, GORDON TAYLOR, HENRY ALLARD,
ANDRES LUCAS, JOHN L. KANE, WILLIAM J.
WELLS, FRANK A. CARLSON, WILLIAM EPPIN-
GER, ALLEN L. WILLIAMS, RUTH S. STOCKTON,
KENNETH FENWICK, CHESTER HOSKINSON,
and JOE B. LEWIS, individually and as citizens
of the State of Colorado, residents in the Coun-
ties of Adams, Arapahoe, and Jefferson, and
taxpayers and voters in the State of Colorado,
for themselves and for all other persons simi-
larly situated,

Plaintiffs,

Civil Action

No. 7637

THE FORTY-FOURTH GENERAL ASSEMBLY of
the State of Colorado, JOHN LOVE, as Gov-
ernor of the State of Colorado, HOMER BEDFORD,
as Treasurer of the State of Colorado, and
BYRON ANDERSON, as Secretary of State of
the State of Colorado,

Defendants.

EDWIN C. JOHNSON, JOHN C. VIVIAN,
JOSEPH F. LITTLE, WARWICK DOWNING, and
WILBER M. ALTER, individually and as citizens,
residents and taxpayers of the State of Colo-
rado, on behalf of themselves and for all per-
sons similarly situated,

Civil Actions
No. 7501 and
No. 7637

Intervenors.

Francis R. Salazar and Carl Harthun, Attorneys at Law, 304 Denver-U. S. National Center, 1700 Broadway, Denver 2, Colorado, for Plaintiffs in Civil Action No. 7501.

George Louis Creamer and Charles Ginsberg, Attorneys at Law, 928 Equitable Building, Denver 2, Colorado, for Plaintiffs in Civil Action No. 7637.

Duke W. Dunbar, Attorney General for the State of Colorado, and Richard W. Bangert, Assistant Attorney General for the State of Colorado, 104 State Capitol, Denver 2, Colorado; Anthony F. Zarlengo and V. G. Seavy, Jr., Attorneys at Law, 830 Majestic Building, Denver 2, Colorado, for Defendants in Civil Actions No. 7501 and No. 7637.

Richard S. Kitchen, Charles S. Vigil and Harvey Williams, Attorneys at Law, 2155 First National Bank Building, Denver 2, Colorado, for Intervenors in Civil Actions No. 7501 and No. 7637.

Philip J. Carosell, Attorney at Law, 430 Majestic Building, Denver 2, Colorado, Amicus Curiae in Civil Actions No. 7501 and No. 7637.

MEMORANDUM OPINION AND ORDER

Before BREITENSTEIN, Circuit Judge, and ARRAJ and DOYLE, District Judges.

BREITENSTEIN, Circuit Judge.

These consolidated actions attack the apportionment of the membership of the bicameral Colorado legislature. At the 1962 General Election, two initiated constitutional amendments were submitted to the electorate. One, known as Amendment No. 7, provided for a House of Representatives with the membership apportioned on a per capita basis and for a Senate which was not so apportioned. The other, Amendment No. 8, apportioned both chambers on a per capita basis. Amendment No. 7 carried in every county of the state and Amendment No. 8 lost in every county.¹ The contest over the conflicting theories presented by these two proposals has not shifted from the political arena to the court. The issue is whether the Federal Constitution requires that each house of a bicameral state legislature be apportioned on a per capita basis.

The plaintiffs are residents, taxpayers, and qualified voters within the Denver Metropolitan Area. The defendants are various state officials² and the Colorado General Assembly. The complaints as originally filed on March 28 and July 9, 1962, respectively, challenged the apportionment of legislative membership under the then existing constitutional and statutory provisions. Because the suits presented substantial questions as to the constitutionality of state statutes and sought injunctive relief, a three-judge court was convened under 28 U.S.C. § 2281. The proponents of Amendment No. 7, which had then been submitted to the Colorado Secretary of State for inclusion on the ballot at the 1962 General Election, were permitted to intervene.³

¹See footnote 32, *infra*.

²Since the suits were filed, the incumbents of these offices have changed. An appropriate order of substitution has heretofore been made under Rule 25(d), F.R.Civ.P.

³Four of the intervenors are residents, taxpayers, and qualified voters of the counties within the Denver Metropolitan Area and the other of Moffat County. One intervenor was a non-profit corporation and it has been heretofore dismissed from the case on the ground of a lack of capacity to sue.

On August 10, 1962, after trial, the court held⁴ that it had jurisdiction, that the plaintiffs had capacity to sue, that the evidence established disparities in apportionment "of sufficient magnitude to make out a *prima facie* case of invidious discrimination," and that the defendants had shown no rational basis for the disparities. The court noted that the aforementioned initiated constitutional amendments would be on the ballot at the ensuing General Election, declined to enjoin the forthcoming primary election and to devise a plan of apportionment, and continued the cases until after the General Election.

Following the approval by the electorate of Amendment No. 7, the plaintiffs amended their complaints to assert that Amendment No. 7 violates the Fourteenth Amendment to the United States Constitution by apportioning the Senate on a basis other than population and that, as the provisions of Amendment No. 7 are not severable, the entire amendment is invalid. In answering the amended complaints, the defendants renewed their jurisdictional objections and asserted the constitutionality of Amendment No. 7.

We are convinced that the allegations of the complaints are sufficient to establish federal jurisdiction under 28 U.S.C. §1343 and 42 U.S.C. §1983, and that the plaintiffs have standing to sue.⁵ The relief sought is a declaration that Amendment No. 7 is void, that the theretofore existing statutory apportionment is void, and that the court fashion appropriate injunctive relief to assure equality in voting rights. Although the prime attack is now against a provision of the state constitution rather than a state statute, the necessity of adjudication by a three-judge district court is still present.⁶

⁴See *Lisco v. McNichols*, D.C.Colo., 208 F.Supp. 471, 478.

⁵*Baker v. Carr*, 369 U.S. 186, 204-208.

⁶See *American Federation of Labor v. Watson*, Attorney General, 327 U.S. 582, 592-593, and *Sincock v. Duffy*, D.C.Del., 215 F.Supp. 169, 171-172.

The Colorado legislature met in January, 1963, and passed a statute, H. B. No. 65, implementing Amendment No. 7. No question is raised concerning the implementing legislation.

Amendment No. 7¹ created a General Assembly composed of a Senate of 39 members and a House of Representatives of 65 members. The state is divided into 65 representative districts "which shall be as nearly equal in population as may be" with one representative to be elected from each district. The state is also divided into 39 senatorial districts, 14 of which include more than one county. In counties apportioned more than one senator, senatorial districts are provided which "shall be as nearly equal in population as may be." Mandatory provisions require the revision of representative districts and of senatorial districts within counties apportioned more than one senator after each Federal Census.

The defeated Amendment No. 8² proposed a three-man commission to apportion the legislature periodically. The commission was to have the duty of delineating, revising and adjusting senatorial and representative districts. Its actions were to be reviewed by the Colorado Supreme Court. The districting was to be on a strict population ratio for both the Senate and the House with limited permissible variations therefrom.

The record presents no dispute over the material and pertinent facts. The parties disagree as to the conclusions to be drawn from these facts. The plaintiffs rely entirely on statistics said to show that population disparities among the senatorial districts result in over-representation of rural areas. The defendants and intervenors assert that the senatorial districts, and the apportionment of senators thereto, have a rational basis and violate no provisions of the Federal Constitution.

¹See Appendix A following this opinion.

²See Appendix B following this opinion.

The prime position of the plaintiffs is that representation in proportion to population is the fundamental standard commanded by the Federal Constitution. They say that this standard requires that each house must be made up of members representing substantially the same number of people.

The principle of equal weight for each vote is satisfied by a system under which all members of the legislature are elected at large. Such system would result in absolute majority rule and would effectively deny representation to minority interests. Although it would assure no dilution of the weight of any individual's vote, it presents the danger of dilution of the representative and deliberative quality of a legislature because of the practical difficulties of intelligent choice by the voters and because of the hazard of one-party domination.

The disadvantages of elections at large are overcome by the principle of districting. This principle provides representation to interests which otherwise would be submerged by the majorities in larger groups of voters.

From the very beginning of our Nation, districting has been used at all levels of government—national, state and local.⁹ The application of the districting principle to a state legislature requires the division of the state into geographical areas and the apportionment of a certain number of members of the legislature to each district. The plaintiffs say that the district boundaries must be so drawn, and the apportionment to each so made, that the result is substantial equality in the number of people represented by each member of each chamber of the legislature. The query is whether this is required by the Federal Constitution.

⁹As said by Neal in his article, "Baker v. Carr: Politics in Search of Law," published in the 1962 Supreme Court Review, 252, 277; " * * * the principle of districting within each such unit reflects our conviction, that the general interest, and the innumerable separate interests of which it is composed, will be better expressed in a medley of voices from minor fractions of the population than by any monolithic majority."

Baker v. Carr sets up no standards for the apportionment of a state legislature. That decision rejects the Guaranty Clause¹⁰ as a basis for judicial action in such cases and speaks in terms of the Equal Protection Clause of the Fourteenth Amendment with overtones of the Due Process Clause. The application of these principles causes us difficulty. If we are concerned with equal protection, the question arises as to what laws we consider when evaluating the equality of protection. In *Baker v. Carr* a non-compliance with state constitutional provisions was present. We have no need to consider whether deliberate departure from state law denies equal protection¹¹ because here we are dealing with the state constitution itself and the attacked provisions fall only if they impinge on the Federal Constitution.

We are not concerned here with racial discriminations forbidden by the Fourteenth and Fifteenth Amendments or with discrimination on the ground of sex in violation of the Nineteenth Amendment. If we reject the republican form of government standard as a basis for judicial action, we are left with the Due Process Clause to support an assertion of denial of equal protection upon the theory that unequal representation denies equal protection because minority process is not due process.¹²

For all practical purposes the Supreme Court has foregone the application of the Due Process Clause in substantive matters unless an impingement on some absolute civil right occurs.¹³ Although the right of franchise is "a fun-

¹⁰U. S. Const. Art. IV, § 4.

¹¹See *Snowden v. Hughes*, 321 U.S. 1, 11.

¹²Dixon, "Legislative Apportionment and the Federal Constitution," *Law and Contemporary Problems*, Vol. XXVII, No. 3, 329, 383.

¹³See *Ferguson, Attorney General of Kansas, v. Skrupa*, 372 U.S. 726, 731, wherein the Court refers to the abandonment of the use of the Due Process Clause "to nullify laws which a majority of the Court believed to be economically unwise."

damental political right, because preservative of all rights,"¹⁴ no provision of the Federal Constitution of which we are aware makes it an absolute right or forbids apportionment of a state legislature on a basis other than one-man, one-vote. *Baker v. Carr* speaks in terms of "rationality" and "invidious discrimination." The use of these terms precludes the existence of an absolute right.

If either the Equal Protection Clause or the Due Process Clause or both require absolute majority action, some drastic governmental changes will be necessary. "Every device that limits the power of a majority is, in effect, a means of giving disproportionate representation to the minority."¹⁵ The problem is compounded in the situation with which we are concerned. With full operation of the one-man, one-vote principle, the Colorado electorate by an overwhelming majority approved a constitutional amendment creating a Senate, the membership of which is not apportioned on a strict population basis. By majority process the voters have said that minority process in the Senate is what they want. A rejection of their choice is a denial of the will of the majority. If the majority becomes dissatisfied with that which it has created, it can make a change at an election in which each vote counts the same as every other vote.

A test for determination of equal protection in appor-

¹⁴*Yick Wo v. Hopkins, Sheriff*, 118 U.S. 356, 370.

¹⁵Quoted from Neal, *supra*, p. 281. Neal says further: "A constitutional principle that puts unequal districting in doubt also calls into question, by necessary implication, provisions requiring special majorities for particular kinds of legislation, such as approval of bond issues in municipal referenda or adoption of proposed constitutional amendments by legislatures or passage of legislation over an executive veto. Why should it not reach, as well, other procedural rules or devices that give obstructive power to minorities, such as the filibuster or the seniority system for choosing committee chairmen?"

tionment cases might logically be better based on the concept of a republican form of government than on the uncertainties, vagueness, and subjective implications of due process. Whichever route is taken the journey ends at the same destination, the necessity of deciding whether the Federal Constitution requires equality of population within representation districts for each house of a bicameral state legislature. We believe that the question must be answered in the negative.

The concept of equality of representation is without historical support.¹⁶ Supreme Court precedents indicate that it is not required.¹⁷ Four, and perhaps five, of the Justices sitting in *Baker v. Carr* reject the idea.¹⁸ A heavy majority of the state and lower federal courts has declined to accept the "practical equality standard" as a require-

¹⁶See the historical material in the dissent of Justice Frankfurter in *Baker v. Carr*, 359 U.S. 186, at 301-324, and the opinion of Judge Edwards in *Scholle v. Hare*, 360 Mich. 1, at 85, 104 N.W.2d 63, at 107, vacated and remanded 369 U.S. 429, on remand 367 Mich. 176, 116 N.W.2d 350, petition for certiorari filed October 15, 1962, 31 Law Week 3147.

¹⁷E.g. *MacDougall v. Green*, Governor of Illinois, 335 U.S. 281, where the Court said: "To assume that political power is a function exclusively of numbers is to disregard the practicalities of government." (p.283) In *Norvell v. State of Illinois*,U.S., decided May 27, 1963, a case relating to the right of an indigent to a trial transcript at state expense, the Court, after quoting from *Metropolis Theatre Co. v. Chicago*, 228 U.S. 61, 69-70, a statement that the problems of government are practical ones which may justify if not require rough accommodations, said: "The 'rough accommodations' made by government do not violate the Equal Protection Clause of the Fourteenth Amendment unless the lines drawn are 'hostile or invidious.'"

¹⁸See concurring opinion of Justice Clark (359 U.S. 186) at p. 252, concurring opinion of Justice Stewart at pp. 265-266, and separate dissenting opinions of Justices Frankfurter and Harlan. Justice Douglas said in his concurring opinion at pp. 244-245: "Universal equality is not the test; there is room for weighting."

ment inherent in the Equal Protection Clause.¹⁹ By the admission of states into the Union with constitutions creating bicameral legislatures, membership to which is not apportioned on a population basis, Congress has rejected the principle of equal representation as a constitutional requirement.²⁰ The decision in *Gray v. Sanders*, 372 U.S. 368, is not contrary because there the Court was not concerned with any limitation on "the authority of a State Legislature in designing the geographical districts from which representatives are chosen * * * for the State Legislature * * *."²¹ The references in *Gray v. Sanders* to one-

¹⁹*Sobel v. Adams*, S.D.Fla., 208 F.Supp. 316, 321, 323, 214 F.Supp. 811; *Thigpen v. Meyers*, W.D.Wash., 211 F.Supp. 826, 831; *Sims v. Frink*, M.D.Ala., 205 F.Supp. 245, 208 F.Supp. 431, 439, probable jurisdiction noted June 10, 1963, U.S. v. W.M.C.A., Inc., v. Simon, S.D.N.Y., 208 F.Supp. 368, 379, probable jurisdiction noted June 10, 1963, U.S. v. Baker v. Carr, M.D.Tenn., 206 F.Supp. 341, 345; *Mann v. Davis*, E.D.Va., 213 F.Supp. 577, 584, probable jurisdiction noted June 10, 1963, U.S. v. Toombs v. Fortson, N.D.Ga., 205 F.Supp. 248, 257; *Davis v. Synhorst*, S.D.Iowa, F.Supp. 31 Law Week 2587; *Nolan v. Rhodes*, S.D.Ohio, F.Supp. 31 Law Week 2641; *Lund v. Mathas*, 145 So.2d 871, 873 (Fla.); *Caesar v. Williams*, 371 P.2d 241, 247-249 (Idaho); Maryland Committee for Fair Representation v. Tawes, 228 Md. 412, 180 A.2d 656, 667-669, 229 Md. 317, 182 A.2d 877, 229 Md. 406, 184 A.2d 715, 718, probable jurisdiction noted June 10, 1963, U.S. v. Levitt v. Maynard, 182 A.2d 897 (N.H.); *Jackman v. Bodine*, 78 N.J.Super. 414, 188 A.2d 642, 651; *Sweeney v. Notte*, 183 A.2d 296, 301-302 (R.I.); and *Mikell v. Rousseau*, 183 A.2d 817 (Vt.).

See Israel, "The Future of *Baker v. Carr*," 61 Mich. L. Rev. 107, 117, which notes as exceptions to the majority rule only *Scholle v. Hare*, 367 Mich. 176, 116 N.W.2d 350, petition for certiorari filed, 31 Law Week 3147 (Oct. 15, 1962), and *Moss v. Burkhardt*, W.D.Okla., 207 F.Supp. 885, appeal dismissed U.S. June 10, 1963. The inclusion of *Moss v. Burkhardt* as an exception is of doubtful propriety because the court there was concerned with specific provisions of the Oklahoma constitution. *Sincock v. Duffy*, D.Del., 215 F.Supp. 169, presented a question of severability and the peculiar factual situation in Delaware. The majority of the court said that the House must be based strictly on population and the Senate "substantially on population." 215 F.Supp. at 195.

²⁰The constitutions of Alaska and Hawaii do not require equality of representation in each chamber of the legislature. In admitting these states Congress found the constitution of each "to be republican in form and in conformity with the Constitution of the United States and the principles of the Declaration of Independence." See Act of July 7, 1958, 72 Stat. 339, and Act of March 18, 1959, 73 Stat. 4.

²¹372 U.S. 368, 376, and see concurring opinion of Justice Stewart at pp. 381-382.

person, one-vote are not pertinent because the Court was considering an electoral system whereby votes for officers elected from a state-wide constituency were weighted differently.

Our conclusion that nothing in the Constitution of the United States requires a state legislature to be apportioned on a strict population basis does not dispose of the problem. The issue remains as to the permissible deviation from a per capita basis. Speaking in terms long applicable to equal protection cases, the Court suggested in *Baker v. Carr* that an apportionment of membership in a state legislature must be "rational" and not "invidiously discriminatory." The issue is narrowed in the cases at bar because, under Amendment No. 7, the lower chamber of the Colorado legislature is apportioned on a population basis. The question is the effect of the failure to apportion the upper chamber on the same basis. A discussion of this matter necessitates a return to the facts.

The cases now before the court do not present the issues as they existed prior to the apportionment made by Amendment No. 7. As noted by our opinion in *Lisco v. McNichols*, 208 F.Supp. 471, 477, the then-existing disparities in each chamber were severe, the defendants presented no evidence to sustain the rationality of the apportionment, and witnesses for the intervenors, while defending the apportionment of the Senate, recognized the malapportionment of the House. The change by Amendment No. 7 was such as to require a trial *de novo* and we are concerned with the facts as finally presented.

In Colorado the problem of districting the state for the election of members of the legislature and of apportioning legislators to those districts requires consideration of the state's heterogeneous characteristics. The politically determined boundaries of Colorado created a state which is not an economically or geographically homogeneous unit.

The topography of the state is probably the most significant contributor to the diversity.

Colorado has an area of 104,247 square miles which is almost equally divided between high plains in the east and rugged mountains in the west. It has an average altitude of 6800 feet above sea level and some 1500 peaks which rise to 10,000 feet or more. The Continental Divide crosses the state in a meandering line from north to south.

In the eastern half of the state are high plains, crossed by two major river systems, the South Platte and the Arkansas. The western half is a mountainous area drained principally by the Rio Grande and by the Colorado River and its tributaries. Major mountain ranges lie east of the Continental Divide in some sections of the state and have foothill areas of varying breadth separating the high peaks from the high plains.

Geographically the state is divided into many regions with transportation difficulties of varying severity. The high plains are crossed from east to west by several railroads and main highways. The only north to south rail system and main highway system in this area lie just east of the foothills. The western part of the state is separated into many segments by mountain ranges and deep canyons. One main-line railroad crosses this section from east to west and none from north to south. Four principal highways provide east to west transportation by crossing the ranges at passes having altitudes of 9,000 to 12,000 feet. The north to south highways are less adequate and follow indirect routes. The terrain of the western section is such that some communities only a few miles apart on the map are many miles apart by the shortest useable road. Commercial air transportation between other than the metropolitan centers is limited.

Colorado is further divided by the availability of water supply. The state is largely semi-arid with only isolated

mountain areas having an annual precipitation of over 20 inches. That part of Colorado west of the Continental Divide has 37% of the total state land area and 69% of the state's surface water yield. The part east of the Continental Divide has 63% of the land area and 31% of the surface water supplies.²² Conflicts over the use of water have troubled the state continuously since its admission to the Union. The growth of the metropolitan areas would have been impossible without the transmountain diversion of water from the Colorado River and its tributaries. The divisive nature of the problem and the need for a state-wide water policy resulted in the creation of the Colorado Water Conservation Board,²³ the members of which are chosen geographically by drainage basins. This recognition of the diverse interests of the competing areas has enabled Colorado to develop impressive irrigation and hydroelectric power projects.²⁴

The 1960 Federal Census gave Colorado a population of 1,753,947 persons. The population is concentrated heavily along the eastern edge of the foothills from Fort Collins on the north to Pueblo on the south. In this relatively narrow strip are located three Standard Metropolitan Statistical Areas as defined by the Census Bureau.²⁵

The metropolitan areas and their populations are: Denver (Adams, Arapahoe, Boulder, Denver and Jeffer-

²²Colorado Year Book, 1959-1961, p. 451.

²³Colo. Rev. Stat. Ann., 1953, §§ 148-1-1 to 148-1-19.

²⁴Colorado Year Book, supra, pp. 459-462.

²⁵So far as pertinent the Census Bureau defines a Standard Metropolitan Statistical Area as: "a county or group of contiguous counties which contains at least one city of 50,000 inhabitants or more or 'twin cities' with a combined population of at least 50,000. In addition to the county, or counties, containing such a city or cities, contiguous counties are included in an SMSA if, according to certain criteria, they are essentially metropolitan in character and are socially and economically integrated with the central city. The criteria followed in the delineation of SMSA's relate to a city, or cities, of sufficient population size to constitute the central city and to the economic and social relationships with contiguous counties that are metropolitan in character."

son Counties)—929,383; Colorado Springs (El Paso County)—143,742; Pueblo (Pueblo County)—118,707.

Expert research economists testifying for the defendants divided the state into four regions, Western, Eastern, South Central and East Slope. The Western Region includes those counties west of the Continental Divide and those east of the Divide and entirely within the Front Range of mountains. The area is largely mountainous with wide fluctuations in elevation, precipitation and temperature. About two-thirds of the population live in communities of less than 2,500 inhabitants or on farms. Over 65% of the area is in some form of government ownership. The major industries are agriculture (principally livestock raising), mining, and tourism.

The Eastern Region is a part of the Great Plains. The area is dominated by agriculture with winter wheat the principal crop. Irrigation in the South Platte and Arkansas Valleys produces specialized crops. Livestock raising and feeding are important activities. There is some oil production.

The South Central Region includes Huerfano and Las Animas Counties and the six counties drained by the Rio Grande. Agriculture (principally potato raising and livestock) and coal mining are the main industries.

The East Slope Region includes the strip of counties from Larimer and Weld on the north through Pueblo on the south. The population is highly urbanized with 86.7% living in urban areas. The economy is diversified with manufacturing, agricultural production, mining, tourism, and trade and services contributing to the wealth of the area.

The state is divided into 63 counties, the boundaries of which have remained substantially unchanged since 1913. Historically, contiguous counties have been grouped into representation districts in accordance with a general pattern which is distinguishable since the early days of

statehood. Geographical divisions such as mountain ranges and river basins, accessibility, homogeneity, and population all have been recognized. The apportionment of membership to the districts has varied with shifts in population. In the early days of statehood the mining counties were heavily populated. After the turn of the century the increased population of the agricultural counties in the high plains and the decline of the mining counties required changes in apportionment. In more recent years the growth of metropolitan areas has caused a demand for greater representation of the urban centers in the legislature.

Apportionment of the Colorado legislature has not remained static. Legislative revisions occurred in 1881, 1891, 1901, 1909, 1913, and 1953. In 1910, Colorado adopted a liberal constitutional provision for the initiative and referendum of both "laws and amendments to the constitution."²⁶ An initiated reapportionment law was adopted in 1932.²⁷ At its next session the legislature passed its own reapportionment law and the conflict between it and the initiated measure went to the Colorado Supreme Court,²⁸ which upheld the power of the people to adopt the initiated reapportionment measure, sustained the validity of the initiated reapportionment, and declared the legislative act unconstitutional. In 1954 the voters rejected a referred apportionment measure and in 1956 rejected an initiated constitutional amendment proposing the reapportionment of both chambers of the legislature on a straight population basis.²⁹

²⁶Colo. Const. Art. V, § 1. A constitutional amendment may be initiated by petition of 8% of the legal voters. No geographical distribution of petition signers is required.

²⁷Colo. S. L. 1933, Ch. 157, p. 811.

²⁸*Armstrong v. Mitten*, 95 Colo. 425, 37 P.2d 757.

²⁹The vote in 1954 was 159,188 against and 116,695 for. The proposal lost in every county. The vote in 1956 was 349,195 against and 158,204 for. The proposal lost in every county except Denver.

After the defeat of the 1956 proposal the Governor appointed a commission to study reapportionment. The majority favored action similar to Amendment No. 7 and the minority recommended action substantially the same as the 1956 proposal and Amendment No. 8. Attempts of the legislature to agree on a reapportionment measure failed. An effort to compel apportionment by state court action failed.³⁰ During the spring of 1962 Amendments 7 and 8 were initiated by petition. Intensive campaigns were waged in support of each.³¹ The voters adopted Amendment No. 7 and rejected Amendment No. 8.³²

The choice of the voters is now before the court. By their action they have apportioned the House on a population basis and have recognized other factors in the apportionment of the Senate. Consideration must next be given to the deviations from equality of representation which occur in the apportionment of the Senate.

Appendix C following this opinion contains tables giving, for each of the four regions delineated by the de-

³⁰In re Legislative Reapportionment, Colo....., 374 P.2d 66.

³¹The witness Edwin C. Johnson, three times Governor and three times United States Senator from Colorado, was one of the sponsors of Amendment No. 7. After mentioning the fact that No. 7 carried in every county and No. 8 lost in every county, he said: "It is very unusual in the annals of Colorado politics that any proposal or candidate receive a plurality in each and every county of this diverse state. Especially as to ballot proposals, there is normally a large built-in negative vote. If people do not understand a proposal, they vote 'no'. I believe that the principal reason for the character of the vote on Amendment 7 is that the issues were very clearly defined, not only by the continuous activities above described from 1953 through 1962, but also in the campaign itself. The proponents of each amendment were highly organized, and they conducted a campaign in every nook and crannie of the state. * * * In addition both proposals were heavily advertised, pro and con, and were the subject of front page editorial treatments by the newspapers of the state. Every communication medium was filled with discussion of this issue for months prior to election day. In short, in these campaigns, the people were intensely interested, fully informed and voted accordingly."

³²Amendment No. 7 was adopted by a vote of 305,700 to 172,725 (63.89% for and 36.11% against), and carried in every county of the state. Amendment No. 8 lost by a vote of 311,749 to 149,822 (67.54% against and 32.46% for), and was defeated in every county of the state.

fense experts, the senatorial apportionment under Amendment No. 7, listing constituent counties, the area in square miles, the population, the apportionment of senators and the population per senator.

The tables disclose that in the Western Region there are eight senatorial districts to which are apportioned eight senators. This region has 13% of the state population, 45.47% of the state area and 20.5% of the senators. There is one senator for each 28,480 persons.

The Eastern Region contains five senatorial districts, to which are apportioned five senators. The region has 8.1% of the state population, 26.21% of the state area and 12.8% of the senators. There is one senator for each 28,407 persons.

The South Central Region contains three senatorial districts, to which are apportioned three senators. The region has 3.8% of the state population, 13.99% of the state area and 7.7% of the Senate membership. There is one senator for each 22,185 persons.

The East Slope Region contains twenty-three senatorial districts, to which are apportioned twenty-three senators. The region has 75.1% of the state population, 14.33% of the state area, and 59.0% of the Senate membership. There is one senator for each 57,283 persons.

The three metropolitan areas of the state have a combined population of 1,191,832 persons or 67.95% of the state total and elect twenty or a majority of the thirty-nine senators. The Denver Metropolitan Area has a population of 929,383 persons or 52.99% of the state total and elects sixteen senators. The City and County of Denver, the central portion of the Denver Metropolitan Area, is allotted eight senators. The suburban portion (Adams, Arapahoe, Boulder, and Jefferson Counties) of the same area is allotted a total of eight senators.

The combination of districts which would result in the election of a majority of the Senate by the smallest population is reached by taking Boulder County out of the Denver Metropolitan Area and adding it to the nonmetropolitan areas. This would result in a population of 636,369 persons or 36.28% of the state total electing a majority of the Senate.

Appendix D to this opinion gives the ratio of the population per senator in each district to the population of the district having the least number of persons represented by a senator. The highest ratio, that of Districts Nos. 11 and 12 over District No. 23, is 3.6 to 1.

The heterogeneous characteristics of Colorado justify geographic districting for the election of the members of one chamber of the legislature. In no other way may representation be afforded to insular minorities. Without such districting the metropolitan areas could theoretically, and no doubt practically, dominate both chambers of the legislature.

The plaintiffs make much of the disparities in senatorial representation which vary downward from 3.6 to 1. They say that the deviations from per capita standards are impermissible. We do not agree. The distributive scheme of Amendment No. 7 may not be perfect but it does recognize the geographic diversities, the historic grouping of counties, and the accessibility of a candidate to the voters and of a senator to his constituents. The realities of topographic conditions with their resulting effect on population may not be ignored. For an example, if the contention of the plaintiffs was to be accepted, Colorado would have one senator for approximately every 45,000 persons. Two contiguous Western Region senatorial districts, Nos. 29 and 37, have a combined population of 51,675 persons inhabiting an area of 20,514 square miles.³³ The division of this area

³³Each of nine states, Rhode Island, Delaware, Connecticut, Hawaii, New Jersey, Massachusetts, New Hampshire, Vermont, and Maryland contains less area.

into two districts does not offend any constitutional provisions. Rather, it is a wise recognition of the practicalities of life. An analysis of the other senatorial districts in all the regions except the populous East Slope would merely emphasize the point.

We are convinced that the apportionment of the Senate by Amendment No. 7 recognizes population as a prime, but not controlling, factor and gives effect to such important considerations as geography, compactness and contiguity of territory, accessibility, observance of natural boundaries, conformity to historical divisions such as county lines and prior representation districts, and "a proper diffusion of political initiative as between a state's thinly populated counties and those having concentrated masses."³⁴

The plaintiffs rest their cases on the argument that the apportionment of the Senate by Amendment No. 7 is arbitrary, invidiously discriminatory, and without any rationality. The voters of Colorado have themselves answered these charges. By adopting Amendment No. 7 and by rejecting Amendment No. 8, which proposed to apportion the legislature on a per capita basis, the electorate has made its choice between the conflicting principles.

The initiative gives the people of a state no power to adopt a constitutional amendment which violates the Federal Constitution. Amendment No. 7 is not valid just because the people voted for it. If the republican form of government principle is not a useable standard because it poses political rather than judicial questions, the observation is still pertinent that Amendment No. 7 does not offend such principle. If the true test is the denial of equal right to due process, we face the traditional and recognized criteria of equal protection. These are arbitrariness, discrimi-

³⁴W.M.C.A., Inc., v. Simon, S.D.N.Y., 208 F.Supp. 368, 379, probable jurisdiction noted U.S., June 10, 1963. See also Mann v. Davis, E.D.Va., 213 F.Supp. 577, 584, probable jurisdiction noted, U.S., June 10, 1963.

nation, and lack of rationality. The actions of the electorate are material to the application of the criteria. The contention that the voters have discriminated against themselves appalls rather than convinces. Difficult as it may be at times to understand mass behavior of human beings, a proper recognition of the judicial function precludes a court from holding that the free choice of the voters between two conflicting theories of apportionment is irrational or the result arbitrary.

The electorate of every county from which the plaintiffs come preferred Amendment No. 7. In the circumstances it is difficult to comprehend how the plaintiffs can sue to vindicate a public right. At the most they present a political issue which they lost. On the questions before us we shall not substitute any views which we may have for the decision of the electorate. In *Ferguson, Attorney General of Kansas, v. Skrupa*, 372 U.S. 726, 731, the Supreme Court said that it refused to sit as a "superlegislature to weigh the wisdom of legislation."³⁵ Similarly, we decline to act as a superelectorate to weigh the rationality of a method of legislative apportionment adopted by a decisive vote of the people.

We believe that no constitutional question arises as to the actual, substantive nature of apportionment if the popular will has expressed itself.³⁶ In *Baker v. Carr* the situation was such that an adequate expression of the popular view was impossible. In Colorado the liberal provisions for initiation of constitutional amendments permit the people to act—and they have done so. If they become dissatisfied with what they have done, a workable method of change is available. The people are free, within the framework of the Federal Constitution, to establish the governmental forms which they desire and when they have acted

³⁵Quoted from *Day-Brite Lighting, Inc., v. Missouri*, 342 U.S. 421, 423.

³⁶See McCloskey, "The Reapportionment Case," 76 *Harvard Law Review* 54, 71-72.

the courts should not enter the political wars to determine the rationality of such action.

Each case is dismissed and all parties shall bear their own costs. The Findings of Fact and Conclusions of Law of the court are set out in this opinion as permitted by Rule 52(a), F.R.Civ.P. The clerk will forthwith prepare and submit an appropriate form of judgment.

DONE at Denver, Colorado this day of July, 1963.

BY THE COURT

Jean S. Breitenstein
United States Circuit Judge,
Tenth Circuit

Alfred A. Arraj
Chief Judge, United States
District Court

APPENDIX A

INITIATED AMENDMENT No. 7.

1962 Colo. Gen. Election

"SECTION 1. Sections 45, 46, and 47 of Article V of the Constitution of the State of Colorado are hereby repealed and new Sections 45, 46, 47 and 48 of Article V are adopted, to read as follows:

"SECTION 45. GENERAL ASSEMBLY. The general assembly shall consist of 39 members of the senate and 65 members of the house, one to be elected from each senatorial and representative district. Districts of the same house shall not overlap. All districts shall be as compact as may be and shall consist of contiguous whole general election precincts. No part of one county shall be added to another county or part of another county in forming a district. When a district includes two or more counties, they shall be contiguous.

"Section 46. HOUSE OF REPRESENTATIVES. The state shall be divided into 65 representative districts which shall be as nearly equal in population as may be.

"Section 47. SENATE. The state shall be divided into 39 senatorial districts. The apportionment of senators among the counties shall be the same as now provided by 63-1-3 of Colorado Revised Statutes 1953, which shall not be repealed or amended other than in numbering districts, except that the counties of Cheyenne, Elbert, Kiowa, Kit Carson and Lincoln shall form one district, and one additional senator is hereby apportioned to each of the counties of Adams, Arapahoe, Boulder and Jefferson. Within a county to which there is apportioned more than one senator, senatorial districts shall be as nearly equal in population as may be.

"Section 48. REVISION OF DISTRICTS. At the regular session of the general assembly of 1963 and each regular session next following official publication of each Federal enumeration of the population of the state, the general assembly shall immediately alter and amend the boundaries of all representative districts and of those senatorial districts within any county to which there is apportioned more than one senator to conform to the requirements of Sections 45, 46 and 47 of this Article V. After 45 days from the beginning of each such regular session, no member of the general assembly shall be entitled to or earn any compensation or receive any payments on account of salary or expenses, and the members of any general assembly shall be ineligible for election to succeed themselves in office, until such revisions have been made. Until the completion of the terms of the representatives elected at the general election held in November of 1962 shall have expired, the apportionment of senators and representatives and the senatorial and representative districts of the general assembly shall be as provided by law."

APPENDIX B

INITIATED AMENDMENT No. 8

1962 Colo. Gen. Election

"Sections 45 and 47, Article V, of the Constitution of the State of Colorado, are hereby amended to read as follows:

"Section 45. APPORTIONMENT BY COMMISSION.

(A) There shall be established a Commission for Legislative Apportionment composed of three members who shall be qualified electors of the State of Colorado, no more than two of whom shall be of the same political party, to serve for a term of eighteen months from the time of their appointment. One member shall be appointed by each of the following in this order: by the Attorney General prior to June 1, by the Lieutenant Governor prior to June 15 and by the State Board of Education prior to July 1, of each year of appointment. The appointments shall be made prior to July 1, 1963, July 1, 1971 and July 1 of each tenth year thereafter.

"(B) It shall be the duty of the commission to delineate senatorial and representative districts and to revise and adjust the apportionment of senators and representatives among such districts. The commission shall certify to the Colorado Supreme Court the boundaries of the senatorial and representative districts and the reapportionment of senators and representatives on or before January 2, 1964; January 2, 1972, and January 2 of each tenth year thereafter.

"(C) If such delineation and apportionment conforms to the requirements of sections 45 through 47 of this article, the court shall affirm the same. If such delineation and apportionment does not conform to the said requirements, or if for any reason whatever the same is not certified to the

court, then the court shall delineate senatorial and representative districts and adjust the apportionment among such districts. The court shall rule on or before April 15 of each year set forth in paragraph (B) of this section, with such districting and apportionment to become effective on the date of the court's ruling. The court shall notify forthwith the secretary of state and the clerk of each county of its ruling.

“(D) The commission shall determine a strict population ratio for the senate and for the house by dividing the total state population as set forth in each decennial United States Census by the number of seats assigned to the senate and house, respectively. No legislative district shall contain a population per senator or representative of $33\frac{1}{3}\%$ more or less than the strict population ratio, except mountainous senatorial districts of more than 5,500 square miles, where the major portion of the district lies west of the 28th meridian of longitude west from Washington, D.C., but no such senatorial district shall contain a population of less than 50% of the strict population ratio.

“(E) It is the intent that sparsely populated areas shall have maximum representation within the limits set forth in paragraph (D) and that population per legislator in densely populated areas shall be as nearly equal as possible.

“Section 47. SENATORIAL AND REPRESENTATIVE DISTRICTS. (A) Senatorial districts may consist of one county or two or more contiguous counties but no county shall be divided in the formation of a senatorial district.

“(B) Representative districts may consist of one county or two or more contiguous counties, except that any county which is apportioned two or more representatives may be divided into representative sub-districts; Provided, that, a majority of the voters of that county approve in a

general election the exact method of subdivision and the exact apportionment of representatives among the subdistricts and the county at large.

“(C) Any proposal to divide a county into subdistricts shall be placed on the ballot only by initiative petition filed with the secretary of state according to the requirements set forth for statewide initiated measures in Article V, Section 1, of this constitution and statutes enacted thereunder; Provided, that, the requirements for the number of signatures and publication shall be determined for that county instead of for the state.

“(D) Subdistricting measures may be placed on the ballot at the general elections of 1966, 1974, and at the general elections held each tenth year thereafter and at no other times. Any such measure shall take effect pursuant to the provisions of Article V, Section 1, of this constitution and shall remain in effect until repealed or revised by the people through another initiated measure, except that when the apportionment of representatives to any subdistricted county is increased or decreased by the commission for legislative apportionment, the commission may, subject to the review provided in Section 45, paragraph (C), of this article, amend the subdistricting in said county as necessary to conform to the new apportionment.

“(E) A candidate for representative in any subdistricted county need not reside in the subdistrict in which he is a candidate.

“(F) No part of any county may be combined with another county or part of another county in the formation of any senatorial or representative district.”

APPENDIX C
APPORTIONMENT OF THE SENATE BY AMENDMENT NO. 7
(Grouped by Regions)

<u>Sen.*</u> <u>Dists.</u>	<u>Counties</u>	<u>Square Miles</u>	<u>Population</u>	<u>Sena-</u> <u>tors</u>	<u>Population</u> <u>Per</u> <u>Senator</u>
WESTERN REGION					
24	Chaffee	1,040	8,298		
	Park	2,178	1,822		
	Gilpin	149	685		
	Clear Creek	395	2,793		
	Douglas**	844	816		
	Teller	555	2,495		
		5,161	20,909	1	20,909
25	Fremont	1,562	20,196		
	Custer	738	1,305		
		2,300	21,501	1	21,501
27	Delta	1,161	15,602		
	Gunnison	3,243	5,477		
	Hinsdale	1,062	208		
		5,466	21,287	1	21,287
29	Rio Blanco	3,264	5,150		
	Moffat	4,761	7,061		
	Routt	2,331	5,900		
	Jackson	1,628	1,758		
	Grand	1,869	3,557		
		13,853	23,426	1	23,426
32	Mesa	3,334	50,715	1	50,715
33	Montrose	2,240	18,286		
	Ouray	540	1,601		
	San Miguel	1,284	2,944		
	Dolores	1,029	2,196		
		5,093	25,027	1	25,027

*The districts are numbered as in H.B. 65. Before the adoption of Amendment No. 7, the state was divided into 25 senatorial districts by Colo. Rev. Stat. Ann. § 63-13 (1953), and 35 senators were apportioned to those districts. Amendment No. 7 retained the same district boundaries except that Elbert County was removed from the district which included Arapahoe County also and was added to the district previously consisting of Kit Carson, Cheyenne, Lincoln, and Kiowa Counties. Arapahoe was left in a district by itself. The membership in the Senate was increased to 39 by apportioning one additional senator each to the suburban counties of the Denver Metropolitan Area, that is, Adams, Arapahoe, Boulder and Jefferson Counties. Counties apportioned more than one senator were to be divided by the legislature into senatorial districts as nearly equal as may be in population. This division was made by H.B. 65. The action so taken is not at issue in these cases.

**Douglas County is a part of the East Slope Region, but because of its peculiarities is joined with five Western Region counties to form a senatorial district.

<u>Sen. Dist.</u>	<u>Counties</u>	<u>Square Miles</u>	<u>Population</u>	<u>Senators</u>	<u>Population Per Senator</u>
35	San Juan	392	849		
	Montezuma	2,097	14,024		
	La Plata	1,691	19,225		
	Archuleta	1,364	2,629		
		5,544	36,727	1	36,727
37	Garfield	3,000	12,017		
	Summit	616	2,073		
	Eagle	1,686	4,677		
	Lake	384	7,101		
	Pitkin	975	2,381		
		6,661	28,249	1	28,249
	Western Region (8 Districts.) (30 Counties)	47,412	227,841	8	28,480

EASTERN REGION

28	Logan	1,849	20,302		
	Sedgwick	554	4,242		
	Phillips	680	4,440		
		3,083	28,984	1	28,984
34	Kit Carson	2,171	6,957		
	Cheyenne	1,772	2,789		
	Lincoln	2,593	5,310		
	Kiowa	1,794	2,425		
	Elbert	1,864	3,708		
		10,194	21,189	1	21,189
36	Yuma	2,383	8,912		
	Washington	2,530	6,625		
	Morgan	1,300	21,192		
		6,213	36,729	1	36,729
38	Otero	1,276	24,128		
	Crowley	812	3,978		
		2,088	28,106	1	28,106
39	Bent	1,543	7,419		
	Prowers	1,636	13,296		
	Baca	2,565	6,310		
		5,744	27,025	1	27,025
	Eastern Region (5 Districts.) (16 Counties)	27,322	142,033	5	28,407

<u>Sen. Dist.</u>	<u>Counties</u>	<u>Square Miles</u>	<u>Population</u>	<u>Sena- tors</u>	<u>Population Per Senator</u>
SOUTH CENTRAL REGION					
23	Las Animas	4,798	19,983	1	19,983
30	Huerfano	1,580	7,867		
	Costilla	1,220	4,219		
	Alamosa	723	10,000		
		3,523	22,068	1	22,088
31	Saguache	3,146	4,473		
	Mineral	923	424		
	Rio Grande	916	11,160		
	Conejos	1,274	8,428		
		6,259	24,485	1	24,485
	South Central (3 Districts, (8 Counties)	14,580	66,554	3	22,185
EAST SLOPE REGION					
1-8	Denver	73	493,887	8	61,736
9-10	Pueblo	2,414	118,707	2	59,353
11-12	El Paso	2,159	143,742	2	71,871
13-14	Boulder	758	74,254	2	37,127
15-16	Weld	4,033	72,344	2	36,172
21-22	Jefferson	791	127,520	2	63,760
26	Larimer	2,640	53,343	1	53,343
19-20	Arapahoe	815	113,426	2	56,713
17-18	Adams	1,250	120,296	2	60,148
	East Slope (23 Districts, (9 Counties)	14,933	1,317,519	23	57,283

<u>Areas</u>	<u>Square Miles</u>	<u>Population</u>	<u>Senators</u>	<u>Population Per Senator</u>
Colorado (39 Districts, 163 Counties)	104,247	1,753,947	39	44,973

Denver Metropolitan Area (Denver, Boulder, Jefferson, Arapahoe and Adams Counties) (16 Districts, 5 Counties)	3,687	929,383	16	58,086
--	-------	---------	----	--------

All Standard Metro- politan Statistical Area ("Denver"- Adams, Arapahoe, Boulder, Denver, and Jefferson Counties; "Colorado Springs"-El Paso County; and "Pueblo"- Pueblo County) (20 Districts) (7 Counties)	8,260	1,191,832	20	59,592
--	-------	-----------	----	--------

APPENDIX D

RATIO OF POPULATION PER SENATOR IN EACH DISTRICT TO THE POPULATION OF THE DISTRICT HAVING THE LEAST NUMBER OF PERSONS REPRESENTED BY A SENATOR

(Grouped by Regions)

<u>District</u>	<u>Population Per Senator</u>	<u>Least Population Per Senator</u>	<u>Ratio</u>
-----------------	-----------------------------------	---	--------------

WESTERN REGION

24	20,909	19,983	1.0-1
25	21,501	19,983	1.1-1
27	21,287	19,983	1.1-1
29	23,426	19,983	1.2-1
32	50,715	19,983	2.5-1
33	25,027	19,983	1.3-1
35	36,727	19,983	1.8-1
37	28,249	19,983	1.4-1

EASTERN REGION

28	28,984	19,983	1.5-1
34	21,189	19,983	1.1-1
36	36,729	19,983	1.8-1
38	28,106	19,983	1.4-1
39	27,025	19,983	1.4-1

SOUTH CENTRAL REGION

23	19,983	19,983	1-1
30	22,086	19,983	1.1-1
31	24,485	19,983	1.2-1

EAST SLOPE REGION

1 - 8	61,736	19,983	3.1-1
9 - 10	59,353	19,983	3.0-1
11-12	71,871	19,983	3.6-1
13-14	37,127	19,983	1.9-1
15-16	36,172	19,983	1.8-1
21-22	63,760	19,983	3.2-1
26	53,343	19,983	2.7-1
19-20	56,713	19,983	2.8-1
17-18	60,148	19,983	3.0-1